

THE DYNAMICS OF STRATEGIC NEGOTIATIONS:
A CASE STUDY OF THE NEW ZEALAND FIRE SERVICE
INDUSTRIAL DISPUTE

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ABSTRACT

This thesis considers the effect of the increasingly dynamic and competitive business environment on employment negotiations. International trends in collective bargaining have resulted in unions and employers negotiating employment contracts in a context that has become progressively hostile to the union institution. However, the hostile nature of management-union interactions has not precluded negotiations from progressing to impasse in the form of an industrial dispute. It does however, render the phenomena of protracted industrial disputes anomalous in contemporary employment relations. The purpose of this research is to investigate the applicability and relevance of extant collective bargaining and negotiations theory to the experience of an industrial dispute. It is propounded that most of the literature pertaining to negotiations is based on brief, or normal periods of negotiations. Thus, the research questions guiding this study engender the extrapolation of the literature to an extended dispute. To this end, Walton, Cutcher-Gershenfeld and McKersie's (1994) model of strategic negotiations has been applied to the dynamics of the New Zealand Fire Service industrial dispute. This was achieved through the qualitative analysis of the Fire Service in a case study design. The primary sources of data were documents and archive records, and interviews with key informants. The analysis of this dispute proffered the conclusion that existing negotiations theory is valuable in explaining the dynamics of a prolonged industrial dispute in the complexities of contemporary employment relations. Furthermore, propositions from the theory enabled a consideration of the relationship between strategic choice and dispute duration, providing pertinent implications for industrial relations policy and practice.

Chapter 1.

INTRODUCTION

1.1 Introduction

In today's business and economic environment, industrial relations policies and practices have borne the brunt of many attempts to enhance flexibility, increase efficiency, and therefore maintain competitiveness or economic effectiveness. In most instances these initiatives necessitate changes to the employment contract and therefore require some element of negotiation with employees. Such negotiations are generally aimed at adapting a formal agreement or legal employment contract. However, the strategies adopted in the process of these negotiations have a significant influence on the nature of those outcomes. This chapter introduces strategic industrial negotiations as the topic of this study and outlines the research methodology used to address its specific research questions.

1.2 The Nature of the Research

Contemporary employment relations policies can generally be categorised into two distinct approaches (Walton, 1989). The first is an approach or strategy based on the concept of control, whereby the perception of employees as an operating expense to be minimised and is manifest in the nature of an organisation's employment relations practices. They are characterised by low trust dynamics (Fox, 1974) and promote the use of monitoring, surveillance, and economic sanctions to control employee behaviour. Alternatively, an employer may pursue a commitment strategy, which is predicated on the assumption that mutual respect and commitment in the employment relationship work better to achieve organisational goals in everybody's interests than a control strategy could. This approach recognises that economic control and sanctions do not entirely control or motivate employee behaviour and can even subvert the attainment of organisational goals (Blau, 1964; Brenkert, 1998). Within these broad policies, industrial negotiations take place between employers and employees, or their respective representatives.

Negotiating an employment contract necessitates a strategic approach in order to put forward and subsequently attempt to maximise a party's preferences and objectives relating to specific negotiating outcomes. The tactics employed by each party become the behavioural manifestation of their particular negotiating strategy (Bacharach, 1983). Negotiating strategies characterised by a competitive orientation tend to use the coercive tactics associated with distributive bargaining in order to maximise their own gain (Olekalns, Smith and Walsh, 1996; Walton and McKersie, 1965). Alternatively, a cooperative orientation can result in outcomes favourable to both parties and is normally enacted through joint problem-solving initiatives. Furthermore, strategies incorporating an element of concern for, in addition to one's own preferences, the attainment of the other party's goals, are more likely to engage in cooperative approaches to contract negotiations (Pruitt and Carnevale, 1993; Walton, Cutcher-Gershenfeld and McKersie, 1994). Given these two distinct approaches to negotiations, in addition to the choice of engaging a combination of both, the parties' strategic choice will influence the nature and quality of negotiating outcomes. However, they also impact upon the parties' ability to achieve a negotiated agreement, and as such, can lead to the impasse characteristic of an industrial dispute.

This study considers the nature of strategic decisions and their tactical implementation within the context of an industrial dispute. It addresses the question of how initial and subsequent strategic choices result in impasse and the dynamics of this process over the duration of a prolonged dispute.

1.3 Research Methodology: A Qualitative Case Study

In approaching this research topic, I have chosen to conduct a qualitative case study of an organisation engaged in an extended industrial dispute. The identification of a case occurred almost simultaneously with the development of the research topic. While considering conducting a study within the field of industrial relations, my attention was drawn to the Fire Service industrial dispute. Further reflection and a growing awareness of other industrial disputes resulted in the increased specificity of the research topic. An initial survey of literature revealed few references to prolonged industrial disputes, particularly those such as the Fire Service that have encompassed several years. This prompted questions pertaining to the ability of established and well-

subscribed theories of industrial negotiations to explain or elucidate the dynamics of extended industrial disputes (e.g. Walton et al., 1994; Walton and McKersie, 1965).

To fully understand an industrial dispute tends to require a longitudinal study, the complexity of which suggested that the most expedient research design would be a single case study. The highly controversial and contemporary nature of the New Zealand Fire Service industrial dispute made it an obvious case to study. The last collective employment contract for professional firefighters expired in February 1994, and at the time of submitting this thesis, the parties remained unable to negotiate another collective contract. During the interceding years, firefighters' have been employed according to the provisions of the expired contract, which were automatically transferred to individual contracts upon the expired contract in accordance with the Employment Contracts Act 1991. This dispute has witnessed a variety of negotiating strategies and tactics as each party endeavoured to negotiate a contract consistent with their own preferences and objectives. The nature of the organisation and the service it provides drew substantial media attention to the dispute, ranging from accounts of events, opinions and editorials, and the dissemination of political and social debate. This facilitated the process of data collection, which began with the accumulation of newspaper and magazine articles documenting the history of the dispute, albeit subject to various subjective perspectives and biases. The study considers the context and nature of the employment relationship prior to the expiry of the collective contract in order to understand initial strategic choices and the quality of interactions. It then analyses a chronology of the dispute from February 1994, when the contract expired, through to June 2000, being the completion and submission deadline for this thesis.

1.4 Conclusion

This chapter provided a brief overview of the research topic within the discipline or field of industrial relations. The broad research topic pertains to the effect of the current business and economic climate upon approaches to negotiating employment contracts. Increased emphasis on the concepts and manifestation of efficiency and effectiveness has implications for the practice of industrial negotiations, introducing issues of adaptation and change to the parties' agenda. The prime focus of this study is the process and dynamics of the strategic choices made in ensuring those agenda items

are agreed upon in terms favourable to a party's objectives. However, it is the phenomenon whereby the parties fail to reach an agreement that provides the impetus behind the study. As such, the New Zealand Fire Service dispute has been researched as a case study illustrating the dynamics of collective bargaining. It's prolonged impasse, or failure to reach an agreement, renders it an exemplary case in which to study the temporal dynamics of strategic choice.

Chapter 2.

LITERATURE REVIEW

2.1 Introduction

The study of negotiating strategies requires an understanding of the nature of the collective bargaining structures and processes that have lead to the development of a strategic negotiations perspective. This chapter begins by tracing the development and theory of traditional collective bargaining, establishing the underlying principles and providing an overview of the processes and tactical behaviour involved in its function. Employment legislation and industrial relations policies vary according to the country in which they are enacted, therefore necessitating an overview of collective bargaining in New Zealand. This includes the role and function of trade unions, the degree of acceptance they receive from employers, and the ways in which unions and employers interact in bargaining contexts. The concept of collective bargaining has been substantially altered by the increasingly competitive nature of business. Whilst unions were once the impetus behind changes to employment contracts and agreements, the requisite improvements in organisational efficiency and flexibility have shifted this balance to compel employers to take a proactive initiative. As a result, the constitution of negotiation has altered. Increased efficiency and flexibility typically require changes to an organisation's structure or work practices. In most instances, such changes require negotiation with employees. It is the notion of change that renders negotiations to be a strategic activity. As such, there are various strategies with which an employer can approach negotiating change with employees. It is postulated that the nature of the strategic choice has an impact upon the nature and quality of the negotiated outcomes.

2.2 The Development of Collective Bargaining

The industrialisation of production and manufacturing processes, among others, in the nineteenth century led to fundamental changes in the nature of the employment relationship. Common law was considered no longer appropriate to govern the unique yet contractual nature of employment. With the change from craft guilds and cottage industries to the new forms of work and employment that accompanied industrialisation

came a lack of clarity regarding the interpretation of common law (Fox, 1974). For a considerable period the employment relationship was viewed in terms of domestic family law, as a master-servant relationship. However, this view was eventually found to be inconsistent with rapid and dramatic changes in the nature of work and the contractual nature of the employment relationship was well established by the end of the nineteenth century (Brook 1990).

Parallel to these arguments in the discipline of law, the field of economics also witnessed debate on how it applied to the employment relationship. At the end of the nineteenth century, institutional economics challenged the usefulness of classical economics in investigating and explaining industrial relations (Kochan, 1980). From the midst of such challenges emerged a pluralistic perspective of industrial relations that recognised the conflicting but interdependent interests of management and labour, laying the foundations for industrial relations theory and labour legislation of the twentieth century.

In addition to the need for the law to accommodate the emerging forms of employment relationships, there was a need to accommodate union representation of workers (Brook, 1990). Trade unions were formed as workers realised that in order to protect their own interests against that of capital they would have to unite and act as a group. At the same time “the law was required to deal with another, arguably more novel, kind of collective: the collective of investors, which was to serve as the basis of the modern corporation” (Brook, 1990: 3).

The concept of collective bargaining originated in England in the 1890s in the writings of the Webbs, although it had its precedent in the trade and craft guilds of medieval times (Brook, 1990). According to the Webbs, collective bargaining was one of several methods used by trade unions to further their basic purpose “of maintaining or improving the conditions of their [members’] working lives” (Webb and Webb, 1920; cited in Flanders, 1969: 11).

The Webbs considered collective bargaining as an alternative to individual bargaining and, where workers were willing and able to combine, they preferred bargaining collectively with an employer as it enabled them to secure better terms and conditions by controlling competition among themselves (Flanders, 1969). In response, employers as the representatives of capital were faced with the choice of asserting their managerial prerogative in the pursuit of organisational objectives, or conceding a marginal role in decision- or rule-making to the institutions of organised labour. Many

employers appeared pragmatically accept the latter rather than absorb the potential costs of not recognising unions. However, where unions were allowed a degree of influence within a confined arena of decision-making, some employers found this development a threat to be contained as far as possible, as Fox (1974: 204-205) indicates:

Under the unitary master-servant ideology, the employer alone defined both the ends and the means of business activities and the duty of employees was to legitimise his [sic] definitions from a posture of unqualified loyalty and obedience. Under collective bargaining their representatives introduced, into certain limited aspects of decision-making, perceptions of their own interests which led them to challenge his [sic] authority.

The concept of unitarism emphasises common objectives and values; the organisation is considered to be a unitary structure. The attention to commonality of objectives and values is purported to unite members in pursuit of organisational goals, which are presumed to be rational and in the interest of members of the organisation (Deeks, 1976). Unitarism accentuates consensus and downplays aspects of power and conflict, except with regard to the power of legitimate managerial authority in directing the organisation (Vecchio, Hearn & Southey, 1996). Conflict is deemed dysfunctional, and should not come between the owners of capital and those who supply their labour, as essentially they are part of the same team (Deery & Plowman, 1991).

In contrast, the pluralist perspective highlights the diversity of groups collected within an organisation and their equally diverse interests and goals. This ideology focuses on issues of conflict and the exercise of power between various groups. Both the unitary and pluralistic perspectives are frames of reference that guide the perception and definition of social phenomena, which in turn determines behaviour (Fox, 1974). It can be argued that the phenomenon of collective bargaining is essentially the practice of a pluralist ideology, where the collective interests of labour, as represented by a trade union, are able to impact to some extent upon organisational decision-making. However, management has been noted as generally recognising and negotiating with trade unions while retaining their unitary ideology and behaviour in order to protect what they viewed as the managerial prerogative by restricting the influence that unions could wield on decision-making processes (Fox, 1974).

Kochan and Dyer (1976) maintain that when employees are formally represented by a union the partial conflict of interests between labour and management are institutionalised, resulting in a third set of interests – those of the union as an

organisation – being introduced to the relationship. The institutionalisation of these sets of interests, belonging to individuals as employees and union members, the union organisation, and the employer, serves to legitimise those interests and it is acceptable for each set to pursue its own objectives during interactions within the interdependent relationship. In order to define the purpose of the trade union, Flanders (1970) observed their behaviour, seeking to make inferences regarding their nature from observing their activities. It was concluded that unions engage primarily in collective bargaining in order to defend and, where possible, improve the working terms and conditions of members. Fox (1974: 41) proposed that within unions “the objective is to construct an agency which can mobilise power.” Whilst an individual wields minimal power in relation to their employer, the mobilisation of a collectivity of individuals provides a means of combining their individual power into a countervailing force. However, the individual employees are surrendering their freedom of action in certain defined areas of behaviour by submitting to the norms and sanction of the union and its leaders, who are also constrained in certain aspects of their behaviour (Fox, 1971).

2.3 The Nature of Collective Bargaining

Chamberlain (1951) identified three theories of the nature of the bargaining process. These theories assume different emphases and suggest different answers for questions pertaining to union-management issues and public policy decisions. Namely, “collective bargaining is (1) a means for contracting the sale of labour, (2) a form of industrial government, and (3) a method of management” (Chamberlain, 1951: 121). These theories are called, respectively, the marketing, governmental, and managerial theories of collective bargaining.

The marketing theory views collective bargaining as the means of determining the price at which labour will be sold in the marketplace. It is the process of determining under what terms labour will continue to be supplied to a company by existing employees and by those employees joining the organisation. In this sense, the function of a union is to redress the inequality of bargaining power between management and an individual worker, in addition to regulating competition that may arise between employees as sellers of labour (Chamberlain, 1951). By restricting the supply of labour available, for example, through regulating the number of apprentices

entering a trade, the union acts as a cartel to restrict competition and maintain the minimum price at which labour, as a commodity, is supplied to the market (Deeks, Parker and Ryan, 1994).

The governmental theory, while recognising the contractual nature of the employment relationship, perceives the contract as a constitution for industrial government of the bargaining unit (Chamberlain, 1951; Flanders, 1969). Thus, collective bargaining is seen as a rule-making process that establishes not only the wages and conditions of employment, but also determines the procedures and processes to be adopted in the determination of those outcomes. Both parties devise and accept rules and regulations governing their negotiations (Deeks, Parker and Ryan, 1994). This theory is based in part on the acceptance that there is a need for a certain balance of power, which rests somewhat on the parties' mutual interdependence and also on their ability to veto the acts of the other party (Chamberlain, 1951).

The managerial theory, in contrast, emphasises the functional relationship between unions and companies, in that they work together to reach decisions in which they both have an interest. The very nature of collective bargaining involves the union in the managerial role, whether unions assert their lack of intent to usurp the managerial role or not (Flanders, 1970).

Chamberlain argues that these theories, rather than representing mutually incompatible alternatives, illustrate stages in the development of collective bargaining. Early negotiations were simply a matter of agreeing on terms for the sale of labour, followed by recognition of the need for procedures to settle disputes regarding the terms of sale and other issues. These procedures sometimes took the form of joint regulatory bodies headed by an independent chairperson, the idea upon which the governmental theory is predicated. Eventually agreements were made on issues that influenced the internal decision-making processes of the organisation, forming the basis of the managerial theory (Flanders, 1970).

Chamberlain and Kuhn (1969) distinguish collective and individual bargaining in terms of freedom to contract. This premise depends on an alternative, or the freedom *not* to contract. For individuals, the freedom not to contract is usually an option. However, for a collective of employees, to refuse the terms and conditions offered by an employer and find alternative employment is a rare opportunity. Similarly, it tends to be difficult for an employer to replace a large number of employees. Chamberlain and Kuhn (1969: 318) state that "where collective bargaining is the prescribed system of

industrial relations, neither company alone nor union alone has any functional significance; rather, they acquire significance only in relation to each other.” Within this system the act of collective bargaining has been conceptualised as a rule-making process, the rules of which are contained in the collective agreement (Flanders, 1970). This is a feature considered to have no equivalent counterpart in individual bargaining. The purpose of the trade union is to limit the power and authority of employers and to “lessen the dependence of employees on market fluctuations and the arbitrary will of management” (Flanders, 1970: 42). Thus, collective bargaining becomes a means for the regulation or control of the employment relationship. It secures a certain rate of remuneration, specifies working hours and other terms and conditions of the employment of union members.

In addition to functioning as a rule-making process, collective bargaining is also considered a decision-making process in that it allows for some degree of employee participation (Joseph, 1969). The union provides individual employees a channel through which to exert more influence on the decisions and rules made by management than through any other available channel (Flanders, 1970). However, participation itself is not an end, but rather a means of allowing employees more control over their working lives, despite the efforts of management to restrict this.

It is the continual nature of the employment relationship that complicates the collective bargaining process. Collective bargaining is a social process that takes place within a relationship of interdependence that exists because each party considers the gains to be had from continuing the relationship to be the best of their alternatives. The alternative to a successfully negotiated agreement is the cost of non-agreement rather than concluding the relationship and entering an alternative state of interdependence with another party (Walton and McKersie, 1965). In most cases of bargaining, if an agreement is not reached the relationship is terminated, at least in the short term. However, in labour negotiations the relationship continues even if unsuccessful bargaining results in a strike or lockout. It has been noted that only when either or both of the parties are pushed past their outer limits does the state of interdependency break down (Joseph, 1969). The continuity of the relationship further complicates the bargaining process as the parties are aware that their approach to and behaviour in negotiations will influence that of the other party, impacting upon further interactions and the achievement of favourable bargaining outcomes (Joseph, 1969).

The state of interdependency arises from the mixed-motive nature of negotiations. Due to the independent nature of the employment relationship, the parties are compelled to cooperate to a certain extent, in their own interest. While motives and preferred outcomes may be in conflict, there must also be a degree of commonality in order for negotiations to occur. According to Rubin and Brown (1975: 10), “the parties’ interests must be sufficiently divergent to warrant interaction, and, at the same time, sufficiently convergent to permit it.” Thus, the competitive motive arises in contexts where the parties have conflicting preferences for certain outcomes (Pruitt and Carnevale, 1993). However, there must also be an element of cooperation arising out of mutual dependence, otherwise the parties would be likely to choose other alternatives than maintain the relationship. The continuity of the relationship further complicates the bargaining process as the parties are aware that their approach to negotiations and their behaviour will influence that of the other party, impacts upon further interactions, and the achievement of favourable bargaining outcomes (Joseph, 1969).

2.3.1 Collective Bargaining Outcomes

Industrial relations theorists have emphasised two sets of outcomes pertaining to labour-management bargaining efforts. The term *substantive contract* is broadly used to cover collective bargaining agreements, formal personnel policies and established practices. These contracts are embedded within a second set of outcomes, known as *social contracts*. The social contract incorporates “broad quid pro quos between labour and management as well as shared understandings about the ‘rules of the game’” (Walton et al., 1994: xiii). Substantive outcomes refer to those affecting the rules, rights and obligations of each party, while those relating to the social contract involve the nature of the employment relationship, or the underlying ideology.

Bargaining, particularly when directed at securing change, is generally aimed at achieving changes in either of these contracts or outcomes. A party’s objectives play a role in determining the appropriate approach to negotiations. Negotiations of a collaborative nature emphasise the identification and attainment of common goals, placing priority of achieving both a party’s own and their partner’s objectives. Alternatively, negotiations that are characterised by a competitive orientation focus on attaining one’s own goals, normally through coercive processes designed to maximise gain (Olekalns et al., 1996).

2.3.2 Collective Bargaining Processes

Labour negotiations can be considered the “deliberate interaction of two or more complex social units which are attempting to define or redefine the terms of their interdependence” (Walton and McKersie, 1965: 3). There are a number of models of collective bargaining that essentially distinguish between two approaches to negotiating within this interdependent relationship. These approaches have been defined as distributive and integrative (Walton and McKersie, 1965), conjunctive and cooperative (Chamberlain and Kuhn, 1969), contending and problem solving (Pruitt and Carnevale, 1993), with each dichotomy illustrating a strategic choice that shapes tactical decisions and implementation, and determines negotiation outcomes. The types of union-management associations or approaches to collective bargaining essentially determine the bargaining strategies and tactics that are considered appropriate or anomalous.

Walton and McKersie’s (1965) contribution, a behavioural theory of labour negotiations, considers four subprocesses of negotiation activity: distributive and integrative bargaining, intraorganisational bargaining and attitudinal structuring.

Distributive bargaining refers to the traditional and dominant activity in labour negotiations. Unions represent employees on issues of wages, terms, and conditions. Negotiation of these issues relates to the allocation of scarce resources, so it is assumed that there will be a degree of conflict in interests between labour and management. Within this type of bargaining activity negotiations may be viewed as a ‘fixed pie’ or zero-sum game, whereby bargaining tactics are engaged to extract the largest possible portion of the ‘pie.’ Thus, the joint-decision process for determining the allocation of resources and resolving the conflict of interest is distributive bargaining (Walton and McKersie, 1965). Distributive bargaining allows the minimum required cooperation of each party and tends to result in low trust dynamics (Fox, 1974). It is aimed primarily at achieving objectives associated with the substantive contract and is considered inappropriate for social contract objectives such as trying to foster greater commitment and trust in the employment relationship.

In contrast, integrative bargaining is considered more cooperative and occurs when the objectives of each party are not necessarily conflicting, but where negotiations focus on a point of common interest in a problem-solving effort (Walton et al., 1994). While distributive bargaining is considered a matter of issues, integrative bargaining relates to problems, or agenda items containing the possibility for greater or less value

to be made available to the parties (Walton and McKersie, 1965). This bargaining approach focuses on increasing the size of the 'pie,' or changing the parameters of issues and ways of thinking about those issues (Pruitt, 1983). The aim is to find complementary or mutual interests in order to solve the problems confronting both parties. It is the nature of those problems and the manner in which they are conceptualised that permits the identification of solutions that are beneficial and acceptable to both parties (Walton and McKersie, 1965). The exchange of information is used as a mechanism for establishing trust and understanding the needs and preferences of the other party (Olekalns et al., 1996). Generally, an integrative bargaining strategy minimises positional commitment and stresses flexibility.

A further subprocess, attitudinal structuring, refers to attempts to influence the attitudes of the parties towards each other. Thus, the parties '...can take advantage of interactions to produce attitudinal change' (Walton and McKersie, 1965: 4). The relationship between the parties is of a continuous nature, extending beyond the scope of negotiations to maintain a working relationship. The tactics involved in the process of attitudinal structuring are argued to be a measure of 'the degree of concern about the maintenance or changing of the basic relationship pattern between the parties and as an indicator of the direction of change desired' (Walton and McKersie, 1965: 9).

The intraorganisational bargaining subprocess incorporates the system of activities that work to align the expectations of a party's principals or constituents with those of their negotiators. It is the task of achieving consensus within each of the interacting groups.

Each of these areas of activity engenders the implementation of particular tactics. The types of negotiation strategies and tactics employed will depend in part on whether the parties are engaged, or intend to engage, in distributive or integrative bargaining, or a combination of these. Bargaining strategies are the "various ways by which the negotiator can influence the outcome by directly influencing the others' perceptions of utilities" (Walton et al., 1994: 59). As such, negotiating tactics are the behavioural manifestation of strategies (Bacharach, 1983). The negotiators' strategic choice incorporates represents their prescription for obtaining their objectives, which is implemented through the use of specific tactics.

2.3.3 Collective Bargaining Tactics: an Overview

While this thesis focuses primarily on analysis at the strategic level of bargaining and negotiations, it is important to indicate the nature of bargaining tactics that may be employed in strategy implementation. This serves to provide a more comprehensive understanding of the nature of these strategies.

Bargaining tactics generally associated with distributive bargaining are predicated on four implicit assumptions. The first assumes that a party's resistance point varies in direct relation to the utilities or value the party has attached to possible bargaining outcomes. For example, a party's resistance point is expected to be lower if they place a lower value on a particular bargaining outcome. Secondly, a party's resistance point is purported to vary inversely to their subjective strike costs. In this case, their resistance point will be lower if a strike is perceived to be a costly option. A third proposition argues that a party's resistance point varies in proportion to their opponent's subjective strike costs. For example, a party's resistance point is likely to be lower if the cost of a strike is going to be greater to the party than to their opponent. Finally, a party's resistance point is also expected to have an inverse relationship with the other party's utilities of possible bargaining outcomes. In this instance, a party's resistance point will be lower if they make a higher estimate of the value of possible outcomes to their opponent. The explicit bargaining positions that the parties assume during negotiations are expected to be influenced by these parameters (Walton and McKersie, 1965).

The nature of these parameters highlights the importance of information in the bargaining process. The relative value of these parameters can change in response to the information that is generated and exchanged during bargaining. It is not necessary for objective conditions to change as the manipulation of information can be used to alter the other party's perceptions of utilities and strike costs. However, actual conditions can also be changed in order to influence the opponent's perceptions (Walton and McKersie, 1965). It follows that there are four tactical assignments to influence the parties' perceptions and facilitate distributive bargaining.

The first category of tactics works to assess an opponent's utilities. In this case, a party is trying to determine the level of gain or loss that would be minimally acceptable to their opponent, as well as attempting to calculate how much a strike might cost them. This may be achieved through direct or indirect means. Indirect assessment

may involve observation of factors affecting a party's economic status and power, such as identifying a company's financial stability and its ability to continue production or provision of a service in the event of a strike. In a union's case, the company might consider the percentage of the workforce that is unionised, the size of a strike fund, and their ability to provide financial support to members during industrial action. Both unions and management may conduct research in order to determine the opposition's stance on particular issues and their associated resistance points. However, the key issue is the need to find out how the other party interprets this information and arrives at a resistance point. The problem is, rather than using the information to work out what their resistance point *should* be, a party needs to understand how their opponent perceives this information and then work out what their resistance point *could* be. To this end, a party could also employ tactics designed to elicit clues from the other party. For example, informal meetings may be held with negotiators from the other party to discover their initial reactions to different proposals. Questions may be asked to clarify the meaning and rationale underlying the opponent's proposals. These questions may also be designed to determine how well prepared the other party is.

A second group of tactics is designed to influence an opponent's assessment of one's own utilities. This may be considered a countertactic to the first set of tactics. While searching for clues about an opponent's resistance point and utilities, one can simultaneously engage tactics meant to conceal or misrepresent information that an opponent will be attempting to obtain (Rubin and Brown, 1975; Walton and McKersie, 1965).

The third set of tactics is used to manipulate the ways in which an opponent perceives or calculates their own utilities. In distributive bargaining the exchange of information becomes tactical, where parties attempt to maximise the information they can obtain while minimising, either by misrepresenting or concealing, the information available to their opponent (Olekals et al., 1996). Thus, in contrast to integrative bargaining strategies, the exchange of information is used to influence the negotiating process, where information seeking presides over the sharing of information.

Finally, the fourth tactical assignment utilises tactics that are used to actually change the objective costs of a disagreement between the parties to negotiations. Either party may seek to manipulate the costs of their opponent while minimising their own costs. For example, a party may seek to apply pressure to their opponent by involving external parties. Alternatively, a party might try to physically exhaust their opponent to

the stage where they might be willing to make concessions just to complete the process. A union can promote the strike costs of an employer in an attempt to force concessions. On the other hand, an employer can manipulate the costs of a lockout to the union and employees. For example, an employer could make overt preparations to hire a replacement workforce or to move operations to another plant (Walton and McKersie, 1965).

2.4 Collective Bargaining in New Zealand

2.4.1 Union Membership and Labour Legislation

In New Zealand, the Trade Union Act of 1878 first recognised the rights of unions to hold assets and to conduct wage bargaining. In this Act unions were defined as “any combination, whether temporary or permanent, for regulating the relations of workers and employers, or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business,” and thus allowed for the registration of both employee and employer associations (Deeks et al., 1994: 35). Under the Industrial Conciliation and Arbitration Act 1894, registered unions gained the right to exclusive jurisdiction in an industry, becoming the legally recognised representative of workers. Subsequently, union membership was made compulsory by the first Labour Government in 1936, with 47 per cent of the workforce unionised by 1937 (Deeks et al., 1994). An industrial relations system dominated by compulsory arbitration and award bargaining remained largely unchanged until the Industrial Relations Act of 1973, followed by the Labour Relations Act 1987. However, it was the National Government’s Employment Contracts Act (ECA) 1991 that dramatically changed the nature of employment relations in New Zealand.

Industrial relations in the 1980s were characterised by the call for, and implementation of, dramatic reforms in accordance with the progressive economic and industrial deregulation instigated by the Labour Government. The ECA is based on an alternative viewpoint stemming from the neo-classical theories of economics (Walsh & Ryan, 1993). The employment relationship is seen as a private contractual relationship between two parties buying and selling labour services, and places ultimate faith in the market as a means of regulating employment. Government intervention serves only to

distort the effective functioning of the labour market (Anderson, 1991; Deeks et al., 1994). According to extreme new-right ideology, the law should not be concerned with social or equity goals, which are better achieved by the operation of the market. Deeks, Parker and Ryan (1994: 88) state that the ECA “presents something of a compromise between an acceptance of the ideology of market regulation and the realities of the employment relationship.” The ECA retains an element of social protection, albeit strongly opposed by new-right theorists. Employers sought deregulation of the labour market in order to promote flexibility and competitiveness. In many developed countries, employers and economists have argued that a major factor inhibiting international competitiveness is an overly rigid labour market.

2.4.2 Bargaining under the Employment Contracts Act (1991)

By removing legislative requirements, the ECA has provided employers with the opportunity to choose whether or not to negotiate and if so, with whom, in a striking contrast to previous legislation. The non-prescriptive nature of the ECA allows an employer to discourage union membership, however without exerting ‘undue’ influence (Hince & Vranken, 1991). This may aim to deny employees access to the resources and power inherent in collective action, “thereby commensurately increasing employers’ discretion to determine the terms of the employment relationship both within and outside collective bargaining” (Wedderburn, 1994: 24). It was the Government’s expectation that individual employment contracts would replace collective agreements, and enterprise agreements would replace national awards (Harbridge, 1993).

Statistics compiled on trends in trade unionism indicate that declining membership predates the ECA, however, the most significant decrease is reported to have occurred between May 1991, when the ECA was introduced, and December 1992. During this period union density, or the percentage of the workforce who are union members, fell from 41.5 per cent to 28.8 per cent. The rate of decline lessened, with union density falling to 23.4 per cent by the end of 1994, 19.9 per cent in 1996, and 17.7 per cent in 1998 (Crawford, Harbridge & Hince, 1998; Crawford, Harbridge & Walsh, 1999). The reported effects of the ECA on bargaining contain a degree of contradiction. Harbridge refers to the collapse of New Zealand’s collective bargaining system, while other commentators argue that collective bargaining seems to remain a dominant and prevalent means of determining wages and conditions, particularly in enterprises with

fifty or more employees (Gilson & Wager, 1998; Harbridge, 1993; Harbridge, Crawford & Kiely 1999).

A number of sections of the ECA underscore a bias towards individual employment contracts. Section 9 pertains to a choice regarding an individual or collective employment contract, with the type of the contract and the contents of the contract being, in each case, a matter for negotiation. Therefore, even if employees would prefer to negotiate a collective contract, an employer can cite section 9 of the Act and justify the negotiation of individual contracts. Furthermore, section 19 implies that without an applicable collective contract, the parties may enter into an individual employment contract as “they think fit” (s.19 (1)). This move towards individual contracts is compounded by the clause stating that, in the absence of a new collective contract, employees will be bound by an individual employment contract based on the lapsed collective contract on event of its expiration (Gilson & Wager, 1998). Even within collective agreements, additional individual contracts can be formed to cover wage rates, giving employers flexibility in this area. Generally, most observers report a move from collectivism to individualism under the ECA (see Harbridge, 1993; Hince & Vranken, 1991; Wedderburn, 1994). Thus, “far from being *laissez-faire*, the Employment Contracts Act creates a contracting environment where the default position for the parties involved becomes that of the individual employment contract (IEC)” (Gilson & Wager, 1998: 171). The apparent paradox, then, is that this puts the onus on employers to establish procedures to reduce their own power while receiving no encouragement or indication from legislation that this is expected of them.

A study conducted on bargaining outcomes under the new legislation has yielded results consistent with the Government’s expectations. McAndrew and Ballard (1995) found that where an enterprise had a strong union presence prior to the ECA, employers were significantly less successful in having their initial proposals accepted. When an employer is not bargaining with a union representative, it is likely that the employees involved will not be very successful in inducing the employer to negotiate beyond their initial proposal. Lord Wedderburn (1994: 22) refers to the individual contract as “for the vast majority of workers a fictitious bargain and in reality a command under the guise of an agreement.” Furthermore, management has the option of developing collective contracts through dealing with individuals directly, which is seen to heighten the imbalance of power. In this case, management may effectively be able to dictate the terms of the contract. Consequently, McAndrew and Ballard (1995)

have proposed two distinct models of bargaining under the ECA: one is a largely unionised negotiation model of collective contracts, and the other is largely non-union and non-negotiation.

Legislation is not the sole reason for declining union density and membership numbers. Structural changes in employment and radical changes in public policy during the 1990s are argued to be likely factors in explaining the speed and magnitude of decreasing membership. Furthermore, structural changes in the economies of many developed countries illustrated by a shift from manufacturing to service industries have also been hypothesised as leading to union density decline (Crawford, Harbridge & Walsh, 1999).

2.4.3 Labour Relations in the New Zealand Public Sector

Prior to the international trend of declining trade union membership, the public sector witnessed higher membership levels than the private sector in many industrialised countries (Yemin, 1993). However, despite the effects of the ECA, unionisation remains the typical case in the New Zealand public sector. “The total numbers of employees covered by collective contracts in the public sector is roughly double the number so employed in manufacturing, the largest site of private sector unionisation. Union density in manufacturing currently lies somewhere between 25 and 30 percent” (Boxall, 1997: 25). According to Dunlop (1969), while there are many similarities in public and private sector employment, there are also important differences. Where a private sector employee will confront the market forces influencing the nature of their employment, public sector employees in government units or agencies are faced with a budget determined by elected representatives and experience the cycle of a budget year. Funding sources can complicate public sector management, whereby funding may come from various sources, some of which may be designated for certain purposes. As such, other levels of government may have the authority to influence, or may demand accountability for the utilisation of funds. Thus, higher levels of authority may directly or indirectly influence the process of employment negotiations in the public sector (Lewin, Feuille, Kochan, and Delaney, 1988).

A fundamental problem facing all governments in their employment relations relates to their conflicting roles of legislator and employer (Simpson, 1993; Walsh, 1991). Public employers are elected representatives who are ultimately responsible to their electorate. On the other hand, public sector employees constitute a large group of

votes, implying they may wield significant political power. However, the presence of other interest groups can serve as a counterbalance to that power, particularly if the interests of public sector employees has economic implications, such as an increase in taxes (Lewin et al., 1988).

It has been questioned if collective bargaining is appropriate given the nature of public sector employment. The government does not typically produce a product or service for which the demand is closely related to price. These products and services rarely have close substitutes and demand for them is relatively inelastic (Wellington and Winter, 1988). This is said to equate to inelastic demand for labour, whereby the employer, and consequently the public, might be forced to pay to price demanded by public sector unions (Cohen, 1988; Lewin et al., 1988). It has been argued, however, that public sector unions' inelasticity of demand as a source of power is decreasing, as economic forces constrain the demands that union could hope to attain. In an era when even the public sector needs to maintain optimum efficiency, even the most essential employees are not irreplaceable.

2.5 The New Era of Industrial Relations

The changes in employment relations in New Zealand reflect similar changes in other countries. In the United States, the number of employers covered by collectively negotiated contracts has steadily declined for the past four decades, while in Britain, trade union density fell from 58 per cent to 48 per cent between 1984 and 1990 in workplaces numbering more than 25 employees (Cutcher-Gershenfeld, Kochan, and Wells, 1998; Sisson, 1995). It can be argued that while traditional theories of industrial relations and collective bargaining are of importance in gaining an understanding the theoretical nature of concepts and perspectives, they are losing relevance in explaining the *practice* of industrial relations as it has experienced fundamental changes over recent decades.

In addition to the effects of labour legislation, the state of the economy is also an influential factor in determining bargaining outcomes (Rasmussen & Lamm, 1999). The economic environment of the past two decades has been characterised by a shift in focus from domestic markets to global competition, deregulation of domestic economies, and economic efficiency (Cappelli, 1990; Sisson, 1995). Parallel reforms in

industrial relations legislation augmented the changes with the resulting Employment Contracts Act (1991) intended to promote the required flexibility. Walton, Cutcher-Gershenfeld, and McKersie (1994: 5) have labelled the changing climate the 'industrial competitiveness era,' in which "a combination of economic, technological, social and political forces began to tear apart the individual and institutional social contracts." Where collective bargaining does take place, the dynamics associated with reaching agreements and implementing change have altered radically.

During the 1950s and 1960s when academics such as Chamberlain, Walton, and McKersie were studying collective bargaining, demands for changes in terms and conditions were largely instigated by trade unions in their efforts to regulate and improve the rewards received by their members (e.g. Chamberlain, 1951; Chamberlain and Kuhn, 1969; Walton and McKersie, 1965). The same issues still play a role, however they may arise outside the boundaries of the traditional collective bargaining relationship. This relationship now tends to be shaped by an organisation's overall labour relations strategy, where a union's stronghold may be diminished by employee relations programs based on the precepts of human resource development, or productivity or quality improvement (Kochan, 1992). Organisations may implement such programs to facilitate new competitive strategies in which flexibility and an enhanced skill base are key requisites (Locke and Kochan, 1995). Consequently, industrial negotiations between management and employees or their unions have moved beyond employing tactics within the traditional social contract. Whilst Walton and McKersie's theory of labour negotiations and its prescriptions regarding formal negotiations remains relevant, "...the real decisions and the real ongoing processes that shape the overall relationships now occur in a more continuous, and ongoing fashion than formal negotiation" (Kochan, 1992: 293).

Organisations may choose to pursue strategies based on cost or price competition, which focus on reducing operational expenditure in order to maintain competitively low-priced products or services. In such organisations labour may be viewed as an expense to be minimised rather than an asset or investment to facilitate a quality-based strategy. Work or operations may be contracted out at a cost lower than would that incurred from performing the work in-house, and labour costs may be minimised through the provision of low wages and few benefits (Locke and Kochan, 1995).

In both quality and cost or price competitive strategies it can be argued that a union may have a marginal role to play. In a quality strategy management may or may not offer unions a role in employee participation initiatives. If employees recognise the role of the union as facilitating their participation in organisational decision-making, the union may find it is sidelined when management offers this role through other means such as formal programs or quality circles. Management may also find it can bypass a union by offering profit-sharing or stock options to employees without union involvement. However, some organisations still choose to retain the participation of unions when pursuing competitive strategies, particularly when non-adversarial relations have been established between management and union. In these instances it has been found that the two organisations may work together, with the union providing a useful channel for communication with employees in order to gain their support for organisational change efforts. In an organisation pursuing a strategy based on cost reduction, a union may experience managerial attempts to bypass collective bargaining with the union in order to undermine the collective strength of employees and use individual contracts to obtain reductions in, or contain, labour costs.

Escalating pressure on management to improve efficiency and competitiveness has resulted in management-led initiatives to fundamentally revise its labour relations (Walton et al., 1994). The dramatic and fundamental changes in the nature of competition and the economic context of business has seen employers become agitators for change while unions, at best, may strive to maintain the status quo. According to Locke, Piore, and Kochan (1995: xiii),

Unions have become passive actors, responding to economic pressures and social forces, seemingly without independent capacity to shape events or determine outcomes. Policy and scholarship have increasingly been dominated by neoliberal social thought. The belief that the structures that the economy requires to operate effectively are self-generating has become pervasive. Constraints imposed upon the operation of the market by government policy or through agreements negotiated among the social actors have come to be blamed for unemployment, inflation, and economic stagnation. Aggressive policies of deregulation and decontrol have spread...throughout the Western Hemisphere.

The development of collective bargaining during the course of the twentieth century has been perceived in terms of a pluralist ideology, where conflicting goals of diverse interest groups is accepted as a feature of an industrial relations system. However, Deeks (1976) has argued that management and employers accepted the role of collective bargaining in a pragmatic manner rather than reflecting a pluralist

ideology. That is, unions and their role in labour relations were accepted by employers in a pragmatic response to legislation and political ideology rather than out of any real desire to negotiate with organised labour. In the changing economic, political and legislative environment, however, employers have been able to revert to behaviour more consistent with a unitarist ideology if they are so inclined as the current environment and labour relations systems, particularly in New Zealand, allow and arguably encourage such an approach.

Furthermore, the tactical considerations of the collective bargaining process have altered substantially. They relate to a broader set of people in the organisation and union, and they are strongly affected by events taking place outside the negotiation process. The negotiation process is now embedded within an extensive and ongoing web of relationships (Kochan, 1992). Employment relationships and disputes are being increasingly influenced by third parties, including political parties, interest groups, and the wider community. Parties engaged in bargaining may seek the support of such groups, or groups may lobby the parties to a dispute, or the government if they feel it impacts upon their interests. As such, it has been argued that a more realistic model of industrial relations is needed to account for the proactive role played by management, as opposed to the traditionally reactive role of responding to union pressure, and for the increasing complexity of collective bargaining (Kochan, McKersie and Cappelli, 1984).

Within the New Zealand context, it has been argued that current collective bargaining theory fails to adequately capture the New Zealand experience. "Traditional collective bargaining theory assumes both a juridical and a procedural check upon managerial prerogatives. Typically, legislation that encourages collective bargaining is seen as a concession to worker demands and in some cases may be evidence of corporatist intent on behalf of the state, a situation that hardly describes the origins of the ECA" (Gilson and Wager, 1998; 171). An important feature of collective bargaining is its collective rule-making function, a notion of procedural activity that is absent in individual bargaining. The whole process of collective representation implies, at least, that joint administration and even joint management are the possible outcomes that emerge from the processes of job regulation (Flanders, 1970). The current paradox, then, is the apparent emergence of collective bargaining structures under legislation that not only erodes institutions of job regulation but fails to even mention trade unions, still less their right to independent forms of representation.

2.6 Strategic Negotiations

While the terms bargaining and negotiating have been used interchangeably in the literature, bargaining carries connotations of trade-offs and concessions, while negotiating implies a more strategic perspective is taken (Fells, 1998). The need to change or restructure in response to a rapidly changing environment has led to *strategic negotiations*, where the focus is on achieving some degree of transformational change. To this end, Walton, Cutcher-Gershenfeld and McKersie (1994) have developed a theory of strategic negotiations whereby a party adopts one of three strategies in their negotiations: to *force* the other party to make substantive concessions, to *foster* contractual changes, or *escape* the current employment relationship. Additionally, an employer may adopt a *mixed* strategy, where forcing and fostering strategies and associated tactics are employed in combination, or consequentially. *Forcing, fostering and mixed* strategies are directed at revising either substantive or social contracts, or a mixture of both. An *escaping* strategy is categorised as a strategy of avoidance. This framework has specific relevance to negotiations incorporating an element of organisational change, particularly that involving significant revisions in the substantive terms or social contracts between management and labour.

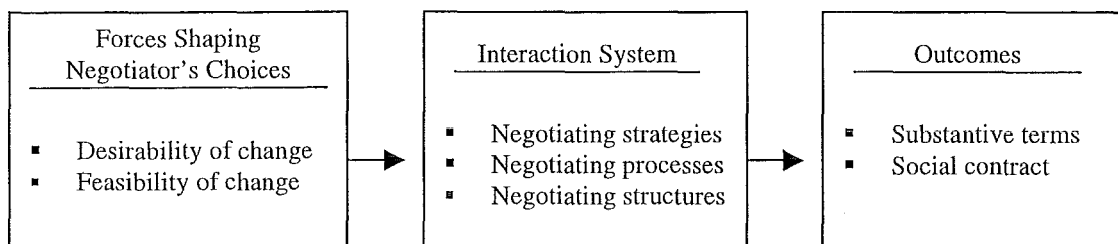


Figure 1.1. General framework for analysing a strategic negotiation (Walton, Cutcher-Gershenfeld & McKersie, 1994: 42)

2.6.1 Negotiating Outcomes

According to Walton et al. (1994), substantive and social outcomes are the result in interactions among the parties who hold a stake in certain issues, such as an employment relationship. The amount of influence each party has depends on the degree of their interest, the extent of their power resources, and how they interact to

influence each other. These interactions take the form of negotiating strategies, processes and structures, all of which are enhanced when they are in alignment with each other (see Fig.1).

2.6.2 Negotiating Strategies

At any point in the employment relationship management may choose to emphasise any one of the three negotiating strategies, or they can be used in combination or sequence. A negotiating strategy characterises a party's approach to the change process. Forcing and fostering strategies each impose a set of appropriate and relatively predictable tactical requirements on the three bargaining processes, and lead to self-reinforcing dynamics. A combined strategy, however, incurs an element of risk as the tactics prevalent in forcing and fostering strategies are often predicated on conflicting principles and motives.

2.6.2.1 Forcing Change

The most common and immediate response to the perceived need for change has been for management to attempt to force economic concessions and/or changes in work behaviour from labour. This may be achieved through distributive bargaining during contract negotiations, or may it be implemented unilaterally during the term of an employment contract. However, the ability to force such change depends on a mixture of bargaining power and evidence supporting the necessity for change.

Employers with long-term objectives to enforce or emphasise a compliance relationship with their employees, or to contain or weaken the union, generally use a forcing strategy. There are a number of objectives that management may be pursuing with its use of a forcing strategy. One may be to constrain employee wage and benefit increases or even attempt to force concessions regarding remuneration. They may also claim a managerial prerogative in an attempt to assert rights to increase operational flexibility by changing work rules and conditions. In turn, establishing this prerogative can also strengthen the managerial right to raise and enforce work standards. Finally, whether as a specific objective or consequences of asserting greater control over the workplace, management may also maintain a power advantage over the union. Management who intend to achieve specific change objectives through forcing in the short term tend to focus on constraining wage and benefit increases and increasing

flexibility. Thus, forcing strategies generally focus on maximising substantive outcomes for management, with little apparent concern for the effect on the social contract. In cases of unrestrained or pure forcing, substantive concessions might be forced even at the expense of working relationships (Walton et al., 1994).

The viability of a forcing strategy depends to a certain extent on the availability and capacity to engage effective bargaining weapons. The declining strength of trade unions has been augmented by a change in public opinion of strike action. As such, unions have found that they can no longer justify the routine use of strikes as a means of gaining bargaining leverage. Tactics engaged in a forcing strategy reflect those defined in Walton and McKersie's model of the distributive bargaining process (Walton and McKersie, 1965). As such, emphasis is placed on the display and utilisation of coercive and persuasive sources of power. In order to achieve change objectives, a party attempts to convey its strong tactical commitment to their bargaining position, by emphasising their commitment to, and the credibility of, their position. In order to withstand such an inflexible stance, unions are forced to muster and strengthen their bargaining power if they are to successfully thwart a forcing strategy.

The successful implementation of a forcing strategy requires that a party focus on building internal consensus around goals and means of achieving them, while concurrently highlighting internal divisions in the other party in order to undermine their collective strength and resistance. This highlights the processes of shaping intergroup attitudes and managing internal differences, particularly in facilitating internal consensus within one's own party. As such, management may impugn the union's motives and bolster adversarial relations between the parties. This serves to promote solidarity and reinforces the hostility required to establish firm commitment to forcing. However, these dynamics tend to result in a self-reinforcing interaction between bargaining processes and strategies (Walton et al., 1994: 47-48). Forcing and antagonistic relations become the dominant theme in the relationship management has with employees and their unions, therefore these processes need to be managed with caution so as not to irrevocably damage the employment relationship.

2.6.2.2 *Fostering Change*

The dominant activity within a fostering strategy equates to the integrative bargaining activities of Walton and McKersie's model of bargaining processes. Using

this strategy, the parties can jointly foster change so as to achieve their respective goals. While the majority of fostering activities takes place continuously in employment relations, they can also be used to facilitate formal contract negotiations (Walton et al., 1994). Moves towards fostering may be initiated by either union or management, however, such moves are often initiated by management in response to a need for organisational flexibility. This strategy also relies on communicating the necessity for change to employees, but it seeks to promote voluntary agreement to change rather than forcing compliance. The premise underlying this approach to negotiations is that to foster cooperation and promote mutual interests will improve attitudes and thus produce substantive and social contract outcomes beneficial to both parties (Walton et al., 1994).

Walton (1989) proposed a commitment strategy of employment relations, whereby employee participation is encouraged and workers are given greater responsibility and flexibility in their jobs. Organisations operating in dynamic environments need to promote flexibility as an ongoing characteristic of the company in order to be able to respond to future changes in its environment. This proves difficult to achieve without the help and commitment of employees. Individual responsibilities can be expected to change as conditions change, and teams rather than individuals are often accountable for performance. With flatter organisational hierarchies and greater responsibility, control and coordination is likely to depend on shared organisational goals and members' expertise rather than formal authority and compliance or control relationships (Walton, 1989).

One of the most important features of a fostering strategy is how the parties share and utilise information. A forcing strategy incorporating the tactics of distributive bargaining is predicated on the need to conceal information about a party's interests and utilities, while seeking information about the other party. However, in order for a fostering strategy to be successful, the parties need to divulge and exchange information in order to fully comprehend the issues and problems facing each party. Only then can integrative solutions be developed and implemented.

This process places emphasis on facilitating positive attitudinal change and fostering the potential for integrative bargaining. These are mutually reinforcing processes as the promotion of trust and respect facilitates open exchange of information, which is crucial to the formulation of integrative solutions. Furthermore, exchanging information encourages trust and promotes positive attitudes. The processes of managing internal differences and shaping intergroup attitudes also play key roles in a

fostering strategy. Each party acts to develop and promote goal consensus within their own organisation, while supporting its diversity of perspectives. Diversity is encouraged rather than managed in integrative bargaining, as it forms an environment in which creative problem solving can take place. Thus, a fostering strategy also links the three primary negotiating processes and may be sustained by the self-reinforcing dynamics of these interactions.

2.6.2.3 Mixed Forcing and Fostering

Mixing forcing and fostering strategies highlights some dilemmas inherent in the bargaining processes. The most notable contrast between the two strategies relates to how the parties manage information in the decision-making process and the nature of emotions that each strategy tends to engender. In a forcing strategy, distributive bargaining tactics require parties to conceal or misrepresent information regarding their preferences for agenda issues and items. In contrast, the integrative bargaining process necessitates the sharing of information in order to fully conceptualise relevant issues and to enable effective problem solving to take place. Furthermore, the nature of the processes and tactics associated with a forcing strategy tend to emphasise an adversarial relationship between the parties.

2.6.3 Negotiating Processes

The interaction system of this framework comprises of three negotiating processes. The first consists of the actual bargaining process between the parties, including distributive and integrative bargaining, which are used to reach agreements. The second is shaping intergroup attitudes, or attitudinal structuring, which incorporates efforts to influence the attitudes of the parties towards each other either positively or negatively. The third bargaining process is influencing intraorganisational differences, or intraorganisational bargaining, both within one's own and the other party (Walton et al., 1994; Walton and McKersie, 1965). This process may serve to promote internal consensus or encourage discord or diversity of opinion within an organisation. Such efforts may be directed promoting consensus within one's own party while encouraging discord, and thus disagreement, within the other party. Alternatively, this process may work to build or undermine internal consensus regarding goals as opposed to encouraging or discouraging internal diversity concerning the proposed means of

meeting those goals. Within one's own party, consensus is generally considered to facilitate the distributive bargaining process by promoting solidarity and accentuating bargaining power. Conversely, internal diversity and the encouragement of differing opinions is considered beneficial to the problem solving approach to negotiations, or integrative bargaining (Walton et al., 1994; Walton and McKersie, 1965).

2.6.4 Negotiating Structures

The final element of the interaction system is the structure within which negotiations take place. It is suggested that there are four elements to be taken into account in analysing the structure of negotiating interactions (Walton et al., 1994).

The first element relates to the frequency of interaction between the parties involved and the number of channels through which the parties communicate. Traditionally, interactions have been characterised by formal, periodic negotiations, such as when a contract is due to expire and a new one needs to be negotiated. However, an increasing trend towards more informal and continuous negotiations has been noted (Kochan, 1992). For example, management may develop a basic agreement with a union that covers the fundamental issues of concern to each party, however, the specific application of these issues to the employment relationship may be discussed or reconsidered on a continuous basis.

A further structural element pertains to the level at which negotiations take place, or the dichotomy between individual and institutional level bargaining. While employment legislation, particularly in New Zealand, tends to emphasise individual negotiations, negotiations at the institutional level are still a prominent feature of negotiating structures. However, the nature of interactions and the relationship between the parties involved have been shaped by the changing nature of the business environment. For reasons such as enhanced flexibility, individual level negotiations have become increasingly common. In many situations this has been to the detriment of collective bargaining structures, but an individual contract does not preclude the concurrent application of a collective contract. In such an arrangement the collective contract may cover basic aspects of employment which are applicable to all employees, while individual contracts may be used to negotiate the terms and conditions of employees based upon their unique contribution to the employment relationship.

The degree of centralisation of negotiations is another structural element of the interaction system. Prior to the Employment Contracts Act (1991), labour legislation such as the Industrial Conciliation and Arbitration Act (1894) and the Labour Relations Act (1987) placed greater emphasis on collective bargaining at the most centralised level. As such, most collective bargaining took place at the industry level where national awards were negotiated and then their contents were applied to constituent enterprises covered by those awards. This system of developing awards to regulate the employment terms and conditions of groups of workers, who may vary widely in terms of both geographic and demographical diversity, was considered to restrict an employer's operational flexibility. Consequently, both legislation and practice has witnessed a move toward individually-based contracts of employment or negotiations at the enterprise level.

A final structural element incorporated into the strategic negotiations framework considers the number of parties involved in negotiations. It has been observed that the dominance of the conventional dyadic relationship between employer and employee, or employee representative, has been eroded by an increasingly multilateral approach where external parties are able to influence negotiating processes (Lewin et al., 1988). This occurs as additional parties develop a greater stake in the outcomes of negotiations. For example, partners in collaborative ventures may wish to influence outcomes in order to protect their interests, or stakeholders such as customers or suppliers may also influence negotiations if they feel their intervention promotes their interests. In contrast to the private sector, public sector negotiations can be inherently multilateral. The interests at stake tend to be more diffuse, involving the interplay of various interest groups and even levels of bureaucracy or channels of accountability. As such, the negotiation process needs to accommodate the variety of interest groups that share power in public sector negotiations (Lewin et al., 1988). However, while some interest groups may not have a formal or legitimate influence upon negotiations, their power or status may be such that they are able to exert considerable influence over negotiators.

2.6.5 The Relationship between Structure and Strategy

Modifications to negotiation structures may be either exogenous or endogenous. Exogenous alterations are those imposed by forces beyond the parties' control, possibly by circumstances or by parties external to the bargaining relationship. In this case,

structure tends to influence strategic choice, where a given structure determines the availability of process tactics, which in turn shape strategic choice (Walton et al., 1994). For example, pressure to obtain substantive outcomes from negotiations applied by interest groups may restrict the likelihood of an agreement being reached through integrative processes and thus discourages fostering.

Either or both parties may initiate other changes to structure in order to facilitate the negotiations process. In this case, the modification is likely to be consistent with the instigator's previous strategic choices or preferences. For example, a party may try to influence the centralisation of negotiations in order to effect change in the parameters of the bargaining relationship and to assist the use of forcing tactics to achieve substantive outcomes. In this case, the selected strategy engenders a choice of tactics and the modification of a structural aspect can facilitate the effectiveness of those choices (Walton et al., 1994). However, these are simplified illustrations of the ways in which structure and strategic choice may be related, where actual relationships may be much more complex and dynamic. Depending on the unique context of specific negotiations, the relationship between structure and strategy may differ. Where individual negotiations may facilitate integrative bargaining in some instances, it may also indicate a move to exploit the bargaining relationship and ease the use of distributive bargaining to dominate a win-lose agreement. Similarly, decentralised negotiations may help parties to engage in cooperative bargaining processes at the enterprise level, while in other contexts it may indicate that the employer intends to undermine the strength of the employee collective in negotiations.

2.6.6 The Relationship between Outcomes and Negotiating Strategies

There are a number of factors that may influence negotiation outcomes. Each organisation, or labour-management pair, operates within a unique set of circumstances affecting the choice of strategy and the relative difficulty of negotiating changes in substantive terms and the social contract. Within a chosen strategy, the choice of tactics and the skill with which these are implemented is also likely to influence the dynamics and outcomes of negotiations. Finally, any deadlines or time pressure can also affect the opportunity the parties have to produce significant change as a result of their negotiations (Walton et al., 1994). Some contexts, particularly those involving some form of teamwork, organisational learning and problem solving, are better suited to

fostering strategies or the commitment model, while other circumstances preclude such approaches (Walton, 1989). A strong forcing strategy focuses primarily on changing the substantive terms of an employment contract with management accepting the consequences this may have on the social contract. Alternatively, a fostering strategy is normally aimed at revising the social contract in ways that impart benefits for both parties (Walton et al., 1994). Therefore, the particular context, history and relationship dynamics associated with negotiations interactions will impact upon the availability and suitability of strategic choices.

2.6.7 The “Managerialisation” of the Negotiating Process

It has been argued that the Strategic Negotiations model of Walton, Cutcher-Gershenfeld and McKersie is essentially a “managerialisation” of the negotiations process as it stresses management initiatives while unions are simply relegated to a role in which they can only react to management strategies (Fells, 1998). However, in the current business environment this is quite often the case. As businesses and enterprises are required to be dynamically competitive, efficient and flexible, management becomes the force behind changes sought in both substantive and social contract objectives. It is the way in which management pursues these changes that impact most upon the employment relationship. Unions are compelled to negotiate as they rarely have alternative means of influencing managerial decision-making. Managerial initiation of change is becoming increasingly common, in which case this model of strategic negotiations is relevant and applicable as it implies an element of change such as organisational restructuring or significant reform or working practices.

2.7 Strategic Choice

2.7.1 Factors Influencing Strategic Choice

According to Watkins (1999), strategy development is contingent on where specific negotiations lie on the continuum between distributive and integrative bargaining. It is argued that if negotiations are primarily distributive then there is little to be gained from providing or sharing information regarding interests when establishing positional commitment may be more profitable. The position of negotiations upon the distributive-integrative continuum depends to a certain extent on

the way in which they are conceptualised or 'framed' by the parties involved. Both a party's own expectations and their perceptions of the other party's expectations and objectives play a major role on influencing negotiating behaviour (Walton et al., 1994). Therefore, while the issues being negotiated may hold some degree of integrative potential, if either or both parties conceptualise those issues in zero-sum terms, that potential for integration, or for improving the potential benefits for both parties, is likely to be overlooked.

The historical nature of the relationship between the parties also influences strategic choice and tactical implementation. A history of contentious behaviour or interaction and distributive bargaining may serve to lock the parties into an adversarial relationship even before formal negotiations commence, thus minimising the likelihood of the use of fostering strategies to reach agreement. Past experiences of conflict may irreversibly distort the parties' perceptions of the other and of how negotiations are likely to proceed (Watkins, 1999).

According to Walton et al. (1994), two broad considerations impact upon the choice of strategic options. The first consideration pertains to the anticipated desirability of specific objectives for change that are most closely related to the organisational change strategy. It is hypothesised that one will tend to adopt strategies and their associated tactics that are more appropriate to the types of benefits that have been given higher priority. For example, if a party's objectives relate to substantive outcomes where there may be strong conflict over wages, that party is considered more likely to use a forcing rather than a fostering strategy. Alternatively, if the party's preferred outcomes are associated with changes to the social contract and that change depends upon the voluntary actions of employees, the party is expected to emphasise fostering, or more integrative approach.

The second consideration that influences strategic choice is the anticipated feasibility of successfully implementing the chosen change strategy. In this case, a negotiator will tend to employ strategies and tactics that they consider more likely to succeed. From the perspective of management, who are usually the party seeking change, there are a number of factors to be taken into account when determining the feasibility of a particular change strategy. The union or employee representative's expected response is a prime indicator of potential feasibility. For example, if management expects the union to react negatively and resist the proposed changes, they may consider a forcing strategy to be the most appropriate means of ensuring the

implementation of change. Therefore, the likelihood that labour will be persuaded by the business rationale for proposals to reduce or constrain increases in their terms and conditions of employment can impact upon strategic choice. If it is anticipated that labour will be open to discussing or accepting the given rationale or justification then management may believe that a fostering strategy is appropriate or beneficial. On the other hand, they may consider a forcing strategy if their employees seem less receptive to such initiatives, leading management to believe they have less to lose by forcing the implementation of change (Walton et al., 1994). Thus, expectation regarding the feasibility of a strategy to achieve specific objectives will influence the type of strategy chosen. However, the expected and actual responses from employee representatives are not always predictable, but are complex and linked dynamically to their own interpretations and perceptions.

2.7.2 Bargaining Power

The bargaining power of each party plays an influential role in determining which strategies and tactics will be used during the negotiation process. As such, bargaining power influences a party's success in achieving the best possible terms in negotiation outcomes. Furthermore, a party is considered more likely to initiate change if they believe they have sufficient coercive power to prevail over the other party. As strategic choice is significantly influenced by expectations of the feasibility of change proposals and labour's response to those proposals, perceptions of bargaining power are as important as actual bargaining power.

A number of different approaches and perspectives have been taken in the study of bargaining power. The field of economics has considered power as an outcome, where it is observed through the impact it has on bargaining outcomes (Kirkbride, 1987). Thus, the power of a union is measured in terms of its ability to gain improvements in wage rates relative to non-union labour and also in terms of labour's share of the national income. Alternatively, management's power may be expressed through their capacity to contain labour cost increases, and also in their share of national income relative to labour. However, accepting this view of power rejects the notion of potential power, or the capacity for future action (Kirkbride, 1987).

Many other perspectives have also focused on the economic aspect, where one's bargaining power is determined by the competition that exists for their services. Chamberlain (1951) defines bargaining power as the cost to party B of disagreeing to

A's terms relative to the cost of agreeing on those terms. For example, if disagreeing with the union's terms incurs higher costs to management than would agreeing with them, the union is considered to have stronger bargaining power. Continuing this theme, the dependence model of bargaining power (Bacharach and Lawler, 1981a) proposes that a party's bargaining power increases as the opposition's dependence on the employment relationship increases. Thus, bargaining power becomes a function of the various alternatives available to a party. For example, an employee's bargaining power may be ascertained by the remuneration they could obtain from alternative employment, that is, by the competition that exists for his or her services. Furthermore, dependence is viewed also as a function of one's commitment to the bargaining outcome, where the more commitment a party feels, the less relative power they wield in the relationship (Leap and Grigsby, 1986).

Structural determinants of bargaining power are also an important consideration when analysing sources of power. Kaufman (1991) argues that there are two fundamental factors giving employers market power. The first relates to any impediment to labour or capital mobility. For example, where there are few buyers of labour (a monopsony), collusion among employers, firm-specific training and skills, discriminatory hiring practices, and barriers to the entry of new firms into the labour market. The second factor refers to general unemployment because while there might be costless and unobstructed mobility, the lack of alternative opportunities in the labour market puts employees in the situation of having to choose between proffered wages and conditions and relinquishing their jobs.

An employer's bargaining power may be determined by the extent to which they form a monopsony, where they are the single 'buyer' of a particular form of labour (Brook, 1990; Kirkbride, 1985). While an employer may attempt to utilise the bargaining power inherent in a monopsonistic employment relationship, even when there is substantial interdependence between the parties there is always likely to be some form of competition or alternative for employees. Most firm-specific skills have some market value as they indicate a capacity to *learn* skills that may be more important to other employers than the *possession* of specific skills (Brook, 1990).

Mishel (1986: 90) defined a structural determinant as one that "is not transitory and that is rooted in the set of institutions (such as unions, firms and technology) that characterise the economic environment." It is this setting that determines the parameters within which behavioural factors have an impact. Unions are not equal in

their capacity to take advantage of a favourable economic environment. According to Craypo (1981; cited in Mishel, 1986), there are three institutional conditions that enhance labour's ability to capitalise on such an environment: organisation of the relevant workforce, elimination of competing unions, and the achievement of a sufficient level of bargaining centralisation. When these conditions are met, a union has achieved its capacity to inflict economic damage on employers. The remaining condition important for a union's ability to capitalise on an agreeable environment is to ensure that they negotiate contracts which cover the relevant workforce either directly, as in industrywide agreements, or indirectly through pattern bargaining among companies (Mishel, 1986). Centralisation of bargaining works to standardise wages, taking them out of competition. If an industry has a high level of unionisation most of the workforce within that industry is covered by an agreement developed through a centralised bargaining process. Similarly, centralised bargaining can transpire within and across firms, where an organisation or group of organisations may have only one union specifically organised to represent the workforce within that organisation, where most employees may be covered by an agreement the union is party to. Decentralised bargaining at the plant or strategic unit level puts a union in a weaker position as the costs of a strike in one unit can be absorbed by the other plants or enterprises (Mishell, 1986).

A Comprehensive Model of Bargaining Power

Leap and Grigsby (1986) conceptualise the factors a comprehensive theory of bargaining power should incorporate. These include consideration of the availability and control of resources, where a party's power is influenced by their available resources in addition to constraints operating in the relationship. The nature of the employment relationship as an exchange relationship ensures the ability to provide, obtain and withhold salient resources is a key source of power.

A distinction between potential and enacted power is also argued to be required in a comprehensive theory. According to Bacharach and Lawler (1981b), the full enactment and utilisation of *every* available source of power is a rare occurrence, therefore theory needs to distinguish between a party's *potential* power and its *enacted* power, or the sources of power that are actually utilised. The two defining features of enacted power are that the parties are aware of the power they possess, and also that their power is engaged in some method to influence bargaining outcomes.

Factors that aid the conversion of potential power to that which is enacted have been termed *transformational* factors. These factors are the result of the impact of resources and constraints on the bargaining process and on the transformation of potential power. Such factors include a party's strength of commitment to the bargaining relationship, the alternatives available to that party, and information available that might impact upon the bargaining relationship. However, strength of commitment to a relationship is a difficult concept to gauge. Furthermore, information processing is an inherent aspect of the bargaining process. The ability to gain information regarding the constraints and resources operating in a specific bargaining situation can provide a power advantage.

Enacted power can be couched in terms of absolute, relative, and total power, distinctions that important in the analysis of bargaining power. Much of the literature focuses on *relative* power, where one party's dependence on the bargaining relationship is analysed in comparison to the dependence of the other party. *Absolute* power describes the bargaining power of one party irrespective of the power the other party may wield, while *total* power is the sum of the parties' dependence on each other (Leap and Grigsby, 1986). "Bargaining issues and relations have often been depicted in both zero-sum terms (absolute power is *fixed* and the gains of one side equal losses incurred by the other side) and variable-sum terms (absolute power is *variable* and gains do not always equal losses) (Bacharach and Lawler, 1981a: 67). However, it is possible for issues normally regarded as zero-sum items to become variable-sum in the long term. For example, a union may achieve a significant increase in overtime payments that is costly to the employer in the short run, however, in the long run the employer can offset this cost by hiring additional employees to reduce overtime hours worked. Thus, a party's collective bargaining power can be observed in the extent to which they alter the zero-variable sum proportions in their favour (Leap and Grigsby, 1986). It has been propounded that actual power is not known until tactical actions or bargaining outcomes are assessed, whereby one considers tactical uses of power (Leap and Grigsby, 1986). Bacharach and Lawler (1981b) studied the association between power and tactical action using simulation experiments. They discovered that a party's dependence on the bargaining relationship, as opposed to their opponent's dependence, in addition to the tactics used by their opponent, determine the party's own tactical choices.

Both constraints impacting upon the relationship and the ability of the parties to control resources vary over time. Bargaining power, whether defined in relative,

absolute, or total terms, also fluctuates over time, depending on the dynamics and types of resources and constraints and the extent to which they can be controlled by either or both parties (Leap and Grigsby, 1986). “Bargaining involves an exchange of resources and resources represent power. Therefore collective bargaining is both a power relationship and an exchange relationship, the units of which may be fixed or variable” (Leap and Grigsby, 1986: 206). In this sense, bargaining is viewed as a political process rather than a purely economic phenomenon (Kirkbride, 1985).

2.8 Propositions for Strategic Negotiations

Walton, Cutcher-Gershenfeld and McKersie (1994) developed a number of propositions from their theoretical framework specifying their predictions for strategic choice given certain circumstances. A forcing strategy is expected when outcomes are of a substantive nature with ambitious objectives, and when combined with a low priority for changes in the social contract. It follows that forcing would be the strategy of choice if management believe labour would not accept a business rationale for proposed changes to the substantive contract. If labour were also expected to oppose management initiatives to move toward a social contract based on commitment and cooperation, this too would support the choice to engage a forcing strategy. If management believes it has superior distributive bargaining power over labour, they are expected to utilise this potential in a forcing strategy. This interaction between perceived bargaining power and strategic choice is emphasised if labour believes it has the power to resist the changes management is pursuing. In this instance, forcing tactics are likely to escalate into unrestrained forcing as each party resists and attempts to overcome the tactics employed by the other party to force their objectives.

Alternatively, fostering is considered more likely to be pursued if management feel labour will be receptive to their initiatives and to management’s substantive and social contract objectives. In contract to the precursors to forcing, fostering is more likely when management places more importance on effecting changes in the social contract rather than significant changes to substantive terms. Based on these characteristics, if management pursue a mixed fostering and forcing strategy, they would be expected to encounter several dilemmas regarding how to handle the process associated with each strategy. The nature of fostering and forcing bargaining processes

are quite distinct and to some extent, incompatible. For example, issues of whether or not to share information, to promote positive attitudes towards the other party, and help build consensus within the other party's ranks are problematical issues in the implementation of a mixed strategy. To this end, a mixed strategy may be bypassed in favour of forcing or fostering strategies, whose processes are relatively easier to execute.

A further proposition suggests that strategy and the structure of negotiations will align over time. Structure may be adapted in order to facilitate implementation of a chosen strategy, or if structure cannot be altered management may modify their strategic approach. For example, if management chose to pursue a forcing strategy based on undermining the union organisation and their bargaining power, they may attempt to decentralise negotiations in order to divide union members into smaller collectives.

2.9 Conclusion

This chapter has traced the development of traditional collective bargaining through its modification to strategic negotiations. The impetus behind this transformation has been a change in business ideology, emphasising the need for organisations to be flexible and adaptive to their environments. This requires new forms of agreements or contracts with employees, resulting in corresponding alterations in negotiations. The state of contemporary industrial relations in New Zealand illustrates changes consistent with this international phenomenon. Union density is declining, as is the preference for collective employment contracts. A valid conclusion to draw from these events is that the employment environment is becoming increasingly hostile to trade unions. Employers tend to view unions as intransigent in their attempts to improve the wages and conditions, which are pursued to the detriment of organisational goals predicated on efficiency and competitiveness. However, in some industries and organisations unions have managed to maintain their ability to resist an employer's efforts to effect changes to an employment contract. It is in this context that unions and employers can find themselves engaged in deadlocked negotiations, struggling to overcome an impasse.

Chapter 3.

RESEARCH METHODOLOGY

3.1 Introduction

This chapter presents the research questions and the methodological approach to addressing these questions. Designing a research methodology also raises issues relating to the researcher's assumptions regarding the nature of reality, knowledge, and human nature. These assumptions, in addition to methodological assumptions, position a researcher's approach to conducting a study within a theoretical paradigm or perspective that guides research design, and thus impact upon research quality.

After defining the fundamental assumptions underlying this research, an explanation of the case study design precedes a discussion of the sources of data and methods of its collection and analysis utilised in this particular study. Furthermore, in any form of research, questions pertaining to its quality and contribution to theory also need to be addressed.

3.2 Research Questions

The development of Walton, Cutcher-Gershenfeld, and McKersie's propositions was based on the analysis of thirteen case studies from three different industries. The case study organisations contained up to three periods of negotiations, with some of the cases exhibiting forcing, fostering and a mixed strategic orientation. The nature of these studies enabled the researchers to conduct comparative analyses at the industry, company, and strategic period levels of analysis. However, the negotiating periods contained within these studies were relatively brief. Furthermore, the negotiating periods within each case pertained to separate and distinct sets of negotiations, as opposed to each period illustrating a different strategic approach within the same set of negotiations. The nature of the cases analysed to develop and illustrate this theory of strategic negotiations engender questions regarding how the framework explains the dynamics of protracted industrial disputes involving an extended period of negotiations to reach agreement on a collective employment contract.

In one of the cases studied by Walton et al., Cleveland Twist Drill, the researchers considered negotiating dynamics that unfolded over time. In this particular case the private sector company was able to pursue a forcing strategy that later developed into unrestrained forcing, whereby the company announced and actually began to implement plans to move its operations to other non-union plants. Thus, management effectively threatened an 'escape' strategy. The Union did not believe management would actually fulfil this threat and it was not until equipment was packed and shipped to alternative plants that the Union conceded and management achieved their objectives. This case and its circumstances provokes questions regarding the effect on strategic choice and development if management cannot escape the existing employment relationship but are required to negotiate, and the parties to the negotiations perceive themselves to wield substantial bargaining power. A prolonged industrial dispute would be an appropriate forum within which to study these effects and the changes that take place in strategy. The duration of the dispute would indicate that the parties' negotiating strategies were ineffectual in reaching agreement, possibly due to the sources and exploitation of bargaining power. As the negotiations proceed, it would be pertinent to theoretical development to investigate any changes in strategic choice and the approaches of the parties as they negotiate, yet fail to reach agreement. For example, it would be interesting to observe the effects on subsequent strategic considerations if an initial forcing strategy fails to achieve its objectives. Would the party proceed with a further forcing strategy, where tactical activities may escalate leading to unrestrained forcing, or would the party consider combining forcing and fostering approaches, focusing on problem solving to overcome the difficulties encountered by the forcing strategy? However, an initial forcing strategy will entail implications for subsequent changes in a party's strategic approach. For example, a forcing strategy tends to engender distrust and suspicion, which complicates any fostering initiatives as the party would need to convince their counterpart of their sincerity. What are the driving or constraining forces that influence retaining or changing negotiating strategy? What could cause a shift from forcing to fostering within the course of negotiations? Furthermore, if the parties engage in integrative bargaining, taking a problem solving approach to the issues underlying their bargaining agenda, what factors could compel a shift to a forcing approach?

This study will focus on the dynamics of strategic choice, or the interaction between strategic choice, previous strategies and potential strategic approaches.

Therefore, this study applies an established theoretical framework to a different context, extending the application of theory. By conducting an analysis of the New Zealand Fire Service industrial dispute case, it will address the following research questions:

- How does the Walton, Cutcher-Gershenfeld, and McKersie framework and its propositions for negotiating strategy apply to a situation where the parties are engaged in negotiations for a considerable length of time?
- What is the nature of the relationship between the duration of negotiations and strategic choice?

3.3 The Nature of Research

Burrell and Morgan (1979) postulate that empirical investigation of the social world is predicated upon basic assumptions about its nature and the way in which it may be investigated. These may be explicit or implicit assumptions, which influence the research approach and methodology. It is argued that social investigations can be defined in terms of ontological and epistemological assumptions, regarding the nature of reality and knowledge, and further assumptions concerning human nature and methodology. Lincoln (1985: 137) states that “we have internalised a set of beliefs and we act upon them without much thought.” Thus, Burrell and Morgan propose that a researcher should consider and clarify the assumptions underlying his or her approach to investigating the social world.

3.3.1 Assumptions Underlying the Research

Ontology

Ontological assumptions are those which define the nature of reality (Burrell and Morgan, 1979; Guba, 1985). The essence of ontology questions whether the *reality* to be investigated is objective and external to individuals or if it is the product of individual consciousness or cognition. If the assumption is made that reality is objective, or something that exists externally to the researcher, then one is assuming that it can be investigated and analysed. While this may be a valid assumption in the natural

or physical sciences, phenomena exist in social science that preclude making such an assumption. For example, it may be argued that there are multiple realities, where participants have differing opinions and perceptions of what is essentially the same variable or concept. It may be difficult to distinguish the social processes being observed from the reality of the researcher, where the observer becomes *part* of that reality.

An implication for research is that socially constructed realities may differ or conflict between individuals or groups and they may alter over time (Guba, 1985; Lincoln, 1985). Furthermore, separating components of a process becomes difficult as to consider reality to be socially constructed means isolating a phenomenon from its context may alter those processes. This is due to the assumption that phenomena are not independent of social processes (Berger and Luckmann, 1966). However, it is often accepted that there is a tangible reality that may be fragmented into variables and processes, which may be studied independently of the others (Guba, 1985).

Epistemology

A second set of assumptions are epistemological, or regarding the nature and source of knowledge. These assumptions question how the world might be understood and how to communicate this as knowledge to others. This also includes ideas on what forms of knowledge may be obtained and how one can determine what can be considered 'true' and distinguished from that which is 'false' (Burrell and Morgan, 1979). Consistent with the nature of ontological assumptions, knowledge is assumed to be created through the research process. Thus, interaction between the investigator and the phenomena under investigation and the influence of ontological assumptions on this interaction, produce knowledge. This engenders issues of objectivity and subjectivity, because to make this assumption suggests that research provides subjective rather than objective knowledge (Guba, 1985). To this end, assumptions of an epistemological nature highlight the significance of context, history and the researcher's values on the research process. As such, these assumptions need to be explicitly acknowledged rather than taken for granted in favour of believing that investigation of social phenomena can be undertaken objectively without influence from the researcher.

Human Nature

Assumptions regarding human nature are associated with ontological and epistemological premises and pertain to the relationship between humans and their environment. These assumptions also need to be taken into consideration as most research undertaken in the social sciences has humans as the subject of inquiry. Supposition of this nature pertains to the distinction between determinism and voluntarism. One questions whether humans respond in a deterministic manner to phenomena they encounter in their surroundings. If so, then humans are likely to be perceived as products of their environment, where they are shaped by external influences. At the opposite end of the determinism-voluntarism continuum is the view that humans instead create their environment, placing emphasis on the concept of free will. The assumptions of most social scientists take an intermediary position, resting in the middle of the spectrum between these two extreme viewpoints (Burrell and Morgan, 1979).

Methodology

The aforementioned assumptions impact upon the methodological nature of empirical research in the social sciences. These assumptions implicitly determine and describe the processes by which these investigations are executed (Morgan, 1986; Guba, 1985). A researcher's methodological choice is influenced by the parameters of his or her ontological and epistemological positioning. As emphasised in the premises of the epistemological nature, research methodology also needs to take into account the notion that research involves the interaction of investigator and the subject of investigation.

Within this set of assumptions is the ideographic-nomothetic debate. The ideographic approach to investigation in the social sciences rests on the supposition that one needs to obtain direct experience with the subject of study before it can be understood. Thus, emphasis is placed on context and history in conjunction with first-hand knowledge or experience of the subject. In contrast, the nomothetic approach stresses the importance of predicating research upon systematic methods and techniques. The canons of scientific rigour of the natural sciences and the processes of developing and testing hypotheses are consistent with this research approach (Burrell and Morgan, 1979).

3.3.2 Theoretical Paradigms and Perspectives

A researcher's beliefs regarding ontology, epistemology, human nature and methodology influence how that researcher perceives the world and behaves within it. These assumptions base a researcher's methodological approach within a paradigm or theoretical orientation (Denzin and Lincoln, 1994; Neuman, 1994). A paradigm can be conceived as a general perspective or worldview, providing a means of understanding the complexity of the social world. Paradigms are also normative in that, as a set of beliefs, they govern action and behaviour (Patton, 1990). To this end, Burrell and Morgan developed a framework of theoretical paradigms in the investigation of social phenomena (Figure 3.1).

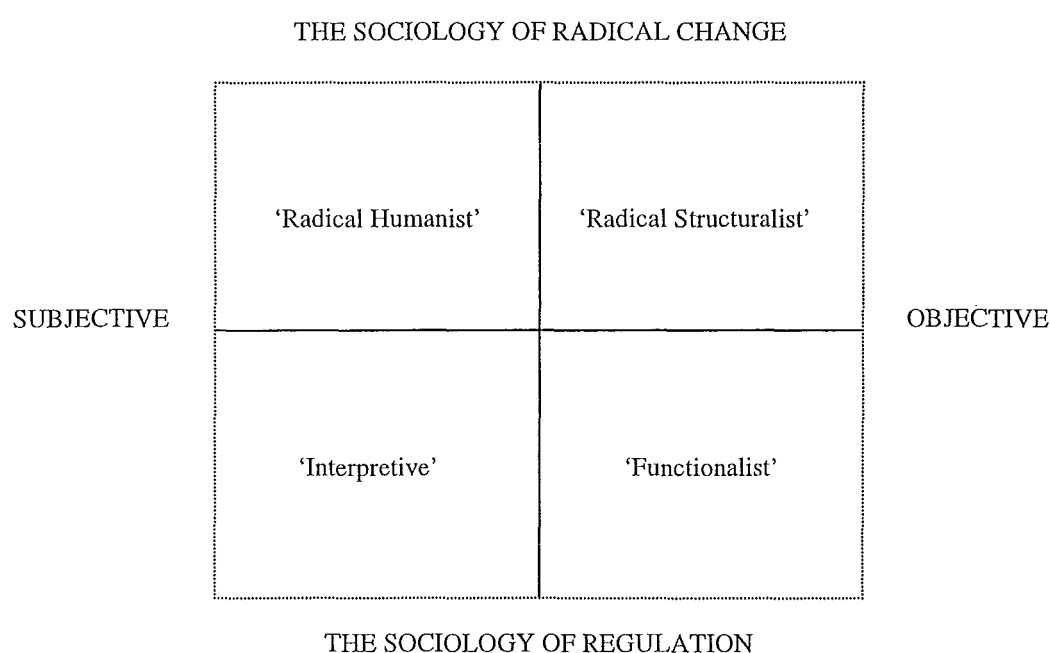


Figure 3.1. Four paradigms for the analysis of social theory (Burrell and Morgan, 1979: 22)

One dimension within this framework is that of objective-subjective continuum while the other relates to the regulation-radical change spectrum. The latter is based on the debate between the sociology of regulation and that of radical change. The sociology of regulation refers to the school of thought that seeks to explain society in terms of its unity and cohesiveness, rather than its dysfunction. In taking this approach, investigations focus on how society holds together, how it is maintained, and the social

forces that prevent it from disintegrating (Burrell and Morgan, 1979). In contrast, the sociology of radical change seeks to develop an explanation of radical change and fundamental structural conflict. It does not restrict itself to explaining the *status quo* but is also concerned with what is possible.

The relationship between these two dimensions is illustrated in Figure 3.1. Each quadrant represents a relationship between the dimensions, indicating a theoretical paradigm. These paradigms are contiguous yet distinct, as they share characteristics along one dimension but differ according to the precepts of the other.

The research in this thesis incorporates a 'functionalist' perspective, as does most sociological and organisational theory. It adopts a 'realist' approach to ontology, a 'positivist' epistemology, a relatively 'deterministic' view of human nature and engages 'nomothetic' methodologies (Burrell and Morgan, 1979). As such, this paradigm is established within the 'sociology of regulation' and assumes an 'objectivist' perspective. Characteristic of this approach is the provision of explanations of social order and consensus. It tends to be problem-orientated, seeking to generate knowledge that can be applied to practical situations.

In their extreme forms, the assumptions of the functionalist paradigm point to the use of purely nomothetic methodologies, or a positivist approach to research. A positivist epistemology endorses a "unity of method" perspective, in which there is no methodological distinction to be made between the natural and social sciences. Thus, investigation and explanation in the social sciences are expected to conform to the systematic processes and methods as applied in the natural sciences (Roth, 1987; Neuman, 1994). However, while the four paradigms are mutually exclusive in their assumptions, the underlying dimensional structure can place various approaches or methodologies at different positions along those dimensions, thus mediating the extreme or pure viewpoints. Consequently, along their dimensions each paradigm is influenced by the precepts of those situated at its border. While pure positivists reject the notion of methodological pluralism and tend to focus on quantitative methods such as experiments, surveys and statistical analysis, within a primarily functionalist orientation it is possible to incorporate interpretivist influences such as its advocacy of qualitative methodologies (Burrell and Morgan, 1979). Roth (1987) supports the concept of 'meaning realism' where, in methodological terms, research in the social sciences should endeavour to recapture or express the beliefs or perspectives of the subjects of study rather than explaining social behaviour in the pure positivist manner of noting

'lawlike' relations. Some academics have argued that as a subject of investigations, humans are qualitatively different from the typical subjects of inquiry in the natural sciences, such as rocks, plants, and chemicals. Humans think, learn, and have an awareness of themselves and their context, and possess motives and reasons. As such, it is stated, these characteristics of the human race deserve a unique form of science to study them and their social environment (Neuman, 1994).

3.3.3 Deductive versus Inductive Methodologies

The most common and basic distinction between deductive and inductive approaches to research is often delineated in terms of quantitative and qualitative research. However, the difference between these two approaches exceeds this basic dichotomy. Deductive research conforms to the precepts of logical positivism and is most closely linked to research in the natural sciences. For example, in following the hypothetico-deductive research model, an investigator begins with a theory regarding a phenomenon, which prescribes statements about that phenomenon (Patton, 1990). The statements are then used to derive hypotheses about its nature and characteristics, and are empirically tested through the collection of data. Analysis of the data enables the researcher to prove or disprove, accept or reject their hypotheses. Research of this nature tends to focus on the quantitative analysis of relationships, often of a causal nature, between elements of a phenomenon. The researcher determines in advance which variables are important and the relationships among those variables that can be expected (Patton, 1990). Alternatively, inductive research as adopted by qualitative researchers, assumes little about what an observed phenomenon means until a description or explanation of its context is developed and used as a frame of reference for understanding that phenomenon (Van Maanen, 1983). According to Roth (1987: 162), "induction is a propensity we possess prior to learning, which is necessary for learning."

Grounded theory can be thought of as inductive research in a more pure form, as the researcher approaches their study and data collection with a degree of theoretical ignorance. In taking this approach to understanding phenomena, grounded theorists do not first familiarise themselves with existing literature and instead try to ground their understanding of their subject in its own context without the influence of preconceptions. The researcher looks for concepts and categories that emerge from the

data, thus the theory that emerges is contextually grounded in the data (Strauss and Corbin, 1990). However, the inductive model is argued not to exist in its pure form. No matter how a researcher may try to study a context or phenomena without preconceived notions, their own experience, context, and assumptions will influence the way in which they perceive their subject (Yin, 1994).

Inductive and deductive perspectives can be conceived as forming a continuum of methodological choices and approaches. Studies that assume a more deductive stance include experiments, surveys, and statistical analyses of operationalised concepts. Qualitative methodologies stress the socially constructed nature of reality and the situational constraints that shape investigation (Denzin and Lincoln, 1994). This perspective tends to preclude the operationalisation of elements in the social world. However, while qualitative studies do not emphasise the analysis of causal relationships between variables, nor do they need take an entirely inductive approach to understanding the research setting.

This research lies between the extremes of purely deductive and inductive approaches. It does not follow the deductive model of hypothesising about relationships among variables, but uses existing theory as a frame of reference from which to understand a new context. Implications of the researcher's assumptions for methodological choices include the supposition that knowledge produced is grounded within the processes studied and is therefore contextual. As such, established theory provides a means of understanding and conceptualising phenomena rather than providing a means of establishing the generalisability or universality of the elements of phenomena under investigation. An overview of existing literature and ways of conceptualising collective bargaining provides a framework with which one can begin to understand the unique phenomena apparent in the case of the New Zealand Fire Service industrial dispute. Knowledge that will ensue from the study of this setting is not predicted in advance. "The qualitative methodologist attempts to understand the multiple interrelationships among dimensions that emerge from the data without making prior assumptions or specifying hypotheses about the linear or correlative relationships among narrowly defined, operationalised variables" (Patton, 1990: 44). Instead, an understanding of activities and outcomes is derived from experience within the research setting. Thus, this research assumes moderated positions in terms of both functionalist-interpretivist and deductive-inductive perspectives.

3.3.4 Qualitative Research Methodologies

The key assumptions and primarily inductive approach indicate the appropriateness of qualitative research methodologies in this thesis. Qualitative research has been defined as "...the studied use and collection of a variety of empirical material. The use of multiple methods, or triangulation, reflects an attempt to secure an in-depth understanding of the phenomenon in question" (Denzin and Lincoln, 1994: 2). This approach emphasises social context in order to understand the social world. According to Lincoln (1985: 150), "although a picture may be worth a thousand words, those thousand words are worth considerably more than a statistical table when the subject is *why*."

Patton (1990: 483) states that qualitative data will tend to make the most sense to people who are comfortable with the idea of generating multiple perspectives rather than absolute truth. This approach befits the nature of industrial relations research, particularly when investigating industrial disputes. Walton, Cutcher-Gershenfeld and McKersie (1994: 59) characterise negotiations as comprising a "multitude of potential misperceptions, changing expectations, self-reinforcing dynamics, and formidable dilemmas." The conflictual nature of industrial disputes tends to preclude the identification of a common perspective of events and issues, with multiple and conflicting views an inherent element of such disputes. However, "this combination of predictable and unpredictable aspects of negotiated change makes it an especially interesting process to study and challenging to guide" (Walton et al., 1994: 59).

3.4 Research Design: A Case Study Approach

Research design is a term used to describe flexible guidelines connecting theoretical paradigms to strategies of inquiry and methods for collecting empirical material. The choice of methodology and its design situates the researcher in the empirical world, linking them to their subject of inquiry. When formulating a research design, a researcher needs to consider what information will most appropriately answer specified research questions and which would be the most effective strategies for obtaining that information (Denzin and Lincoln, 1994). It has been propounded that a 'case study is a method of choice when the phenomenon under study is not readily distinguishable from its context' (Yin, 1993: 3). The research questions developed in

this study consider the dynamics of strategic choice in long-term negotiations, or an industrial dispute. The very nature of this topic points to a case study methodology. An ongoing industrial dispute is complex in both its inherent characteristics and the temporal dynamics. It is also a relatively rare occurrence in negotiations, with few negotiations spanning years or decades before reaching some degree of consensus or agreement. Furthermore, a dispute cannot easily be isolated from the context within which it occurs, as it is influenced by events and processes beyond the boundaries of the parties involved. There are issues of social, legal, political, economic, and technological processes that impact upon the dynamics of a dispute. Numerous events impact upon an industrial dispute. Primary social processes influencing the New Zealand Fire Service dispute pertained to the changing economic climate and the resulting moves to reform and restructure much of the public sector. Furthermore, third parties also play a significant role, particularly when the dispute takes place within the public sector. In order to gain an understanding of the dispute, one also needs to understand and take into account the context in which it takes place. It has also been proposed that case studies are preferable when the researcher has little control over events (precluding experimental or manipulation forms of research) and when the subject of investigation is a contemporary phenomenon occurring within a real-life context (Yin, 1994).

This research may be conceptualised as an instrumental case study. In this approach a case is studied in detail, its context explored, and a description provided, but that is not the sole purpose of conducting the study. An instrumental case study relegates description second to the case's ability to provide insight into an issue or refine theory (Stake, 1994). In this instance, the case study is conducted to extrapolate theory to a different context. This serves to provide both insight into the dynamics of strategic choice in a distinct negotiating context and it enables one to question how existing theory is able to contribute an understanding of that context. Instrumentality does not necessitate that the case be typical of other cases. The choice of a case can be made on the basis that it is expected to further understanding of the issues it illustrates (Stake, 1994). A case may be chosen to replicate previous studies, extend emergent theory, or fill a theoretical category (Eisenhardt, 1989). While other disciplines may stress the importance of theory building in research, this tendency appears to be in decline in the qualitative approach to social sciences. It can be argued that the case

study can be viewed as an incremental step towards generalisation and theory building, however, generalisation need not be emphasised in all research (Stake, 1994).

This study takes a longitudinal approach in order to study the dynamics of negotiating strategies. In their analysis of strategic formation, Mintzberg and McHugh (1985) stated that to track strategies one could either follow an organisation over time or reconstruct its behaviour after the fact. The latter is the approach used here for reasons of feasibility. Apart from time constraints placed on the duration of thesis research, it would not be practical or necessarily possible to track an organisation through a prolonged industrial dispute as it would not be recognised as such until after the event, or at least after a substantial period of time. A longitudinal case study is similar in many ways to cross-sectional studies but it also enables the researcher to investigate historical and processual aspects (Rose, 1991). Pettigrew (1987) propounds that a processual analysis is predicated on the notion that an organisation or social system may be explored as a continuing system, with a past, a present, and a future. Therefore, valid theory should take into account the history and the future of the system and relate them to the present.

3.4.1 The Role of Theory

Hartley (1994) states that a case study cannot be defined according to the research techniques it employs, as these are flexible and varied. Instead, it should be defined in terms of its theoretical orientation, while not necessarily substantive theory, but the emphasis placed on the understanding of processes within their context.

The role of substantive theory is also important to the issue of methodological choice. According to Yin (1993: 4), “good use of theory will help delimit a case study inquiry to its most effective design; theory is also essential for generalising the subsequent results.” In an instrumental case, the concerns of other researchers are manifest in the case. As such, the researcher is likely to be aware of the critical issues prior to conducting their study and by following the norms or guidelines of their discipline, they can construct their design to take advantage of preconceived coding schemes (Stake, 1994). A case study without the guidance of theory becomes merely a story, or an account of events that is likely to be of little interest to those beyond the boundaries of the case organisation. When a case study develops a theoretical framework and conveys ideas regarding fundamental social or organisational processes,

it enriches the inferences and gives them greater significance to a wider audience (Hartley, 1994).

3.4.2 Choice of Case

Understanding a particular phenomenon depends in part on careful consideration in choosing the case to be studied (Yin, 1989; Patton, 1990; Stake, 1994). According to Rose (1991), the case study approach can be characterised as an investigation of an event or series of events that the researcher believes exhibits the manifestation of an identified theoretical principle. As such, the choice of a case is theoretically directed, where the phenomena of interest are given in extant theory and the case provided an opportunity to study those phenomena (Stake, 1994; Eisenhardt, 1989).

To address the research questions guiding this study, the case needed to demonstrate certain features. Obviously, the key attribute was for the case organisation to be engaged in an industrial dispute, preferably of considerable length. In order to study the dynamics of negotiating strategies over the course of a dispute, it was also pertinent to consider situations where the parties are required to negotiate with each other, precluding the use of an *escape* strategy. The Fire Service industrial dispute has taken place within such constraints due to the nature of its operations. Thus, employers in the public sector, particularly in the essential services, are discouraged from using an *escape* strategy. Essential services need to be staffed 24-hours a day so employers cannot stop providing their service temporarily while they find replacement workers or other means of escaping their relationship with the current workforce. Furthermore, the Fire Service dispute received considerable media and public attention. This assisted the collection of data about the case, as there have been many newspaper articles and other media items, and many debates over the various issues involved. It is a contemporary and highly controversial case that has tended to polarise public opinion. As such, the findings and conclusions of this study are likely to be of significance to a wider audience and have implications for public policy and both private and public sector employment issues. Thus, the case is of interest in its own right, in addition to the value it holds for

Definition of the unit analysis also follows the logic of selection in qualitative research. Unlike statistical research, logic of comparison or diversity in the selection of units of analysis is not necessary. The unit of analysis in this study lies primarily at the institutional level, however, in analysing the context surrounding the negotiations the

level of analysis is more flexible. Negotiations take place at the institutional level between the Fire Service and the Professional Firefighters' Union. The Fire Service employs a team of representatives to partake in negotiations. References to the 'Fire Service,' 'management,' and 'the employer' are used interchangeably when alluding to the Fire Service's role in negotiations. In some instances in the case, the Fire Service is considered a separate entity to the Fire Service Commission, where the 'Fire Service' refers to the management team, headed by the Chief Executive, which manages the day-to-day operations of the Service. The Fire Service Commission is distinguished from Fire Service management as its role focuses on policy issues rather than operational management, and thus is not directly involved in negotiations. There is a complex relationship between the Fire Service and the Fire Service Commission, the dynamics of which impact upon the course of this dispute. Further to this, references to the 'Union' or 'employees' are used when referring to labour's participation or role in negotiations.

In comparison to the cases studied by Walton, Cutcher-Gershenfeld, and McKersie, this dispute may also be divided into periods of strategic or tactical orientation, but these are located within the parameters of a single set of negotiations aimed at achieving a collective employment contract. While issues and agenda items may evolve over time, it is essentially the same set of negotiations with the same general objective of negotiating an employment contract. It is this characteristic that enables the analysis of the research questions for this study. Specifically, how does the theoretical model of Walton et al. (1994), apply to a context of ongoing impasse in negotiations, and what is the impact of a dispute's duration upon the model's propositions for strategic choice?

3.4.3 Sampling Issues

Even though the case has been decided in advance, there are also sampling decisions regarding people, places and events to observe (Stake, 1994). Several issues were encountered in approaching an investigation of the Fire Service industrial dispute. In order to gain a full understanding of strategic issues the history and context needed to be taken into account, which precluded studying only the period of the dispute. The context prior to the dispute's inception and the history of the employment relationship were important in establishing the causes of the dispute. While studying a dispute spanning several years is a major undertaking, to investigate a portion of that time

would not present a detailed representation of the events and processes that have taken place. According to Stake (1994: 239),

Within its own unique history, the case is a complex entity operating within a number of contexts, including the physical, economic, ethical, and aesthetic. The case is singular, but it has subsections, groups, occasions, a concatenation of domains – many so complex that at best they can only be sampled.

This study follows a purposive, as opposed to random, form of sampling. It is theoretically driven with the intention of maximising the scope and range of data, where the choice of informants, events, and interactions were guided by theoretical concerns (Lincoln, 1985). While quantitative studies may emphasise the generalisability and representativeness of their samples, in a single case study the primary concern is to investigate the conditions under which the theory is applicable and relevant (Eisenhardt, 1989; Miles and Huberman, 1994). In order to obtain the information required, key people were approached in both the Fire Service and the Professional Firefighters' Union. Initial choices of informants are acknowledged to lead to the recommendation of further informants, mediated by the ability to gain access to people (Miles and Huberman, 1994). It is also an opportunistic and iterative process. For example, a tradesperson employed by my landlord was discovered, through general conversation, to be an ex-firefighter and subsequently provided the direct telephone number for the president of the local Union branch in Canterbury. While researching the Union's website, I became acquainted with the "webmaster," who was also discovered to be an ex-firefighter and informal email survey/interviews provided valuable information regarding the employment terms and conditions and general work practices of firefighters. It was also through such contact and recommendations that I obtained access to interview other Union officials and the Transalpine Fire Region manager. Access to key informants is often more easily obtained through personal recommendations than if a researcher tries "cold calling" an organisation or individual.

3.5 Methods and Sources of Data Collection

While a case study is a methodology that does not imply any particular form of data collection, either qualitative or quantitative, this case study focuses on qualitative sources of data to address its research questions. It utilises the concept of data triangulation, whereby multiple sources of data will be used (Denzin, 1970). This works to compare and crosscheck the consistency of information at different times and by various means within qualitative data collection. A key objective is to compare the perspectives of different individuals and groups, and validate data by comparing these perspectives. It is a rare occurrence to obtain a consistent account when analysing data from a number of different sources. Therefore, the aim is to study and understand any discrepancies while looking for consistency in the overall patterns of the data collected (Patton, 1990). This method contributes to the quality of the analysis and findings, and enhances the credibility of the research.

As this study comprises a longitudinal investigation of events spanning several years, archive documents provided the principal source of data. This enabled an attempt to reconstruct events and processes of the dispute based on documents and other written reports that were compiled at the time (Mintzberg and McHugh, 1985). I decided that, due to the historical nature of the study, documents composed at the time of events would provide a more accurate account of those events compared to interviews, which would rely on interviewees' recall. Furthermore, the value of interviews was limited to a certain degree, as key individuals have since left the organisation. Thus, interviews with individuals currently working in the Fire Service would be based on recollection of events or on a second-hand account of events in which the interviewee was not involved. Consequently, I elected to focus on document and archive data originating from the time of the relevant events and activities, with interviews to provide an overview of the case, but with specific emphasis on events at the time of the interview.

3.5.1 Documents and Archives

There has been debate among authors on research methodology regarding whether documents are a primary or secondary source of data. For example, Bailey (1987: 295) defines “the analysis of a document or data gathered from or authorised by another person” as the analysis of secondary data. However, Denzin (1970) argues that archival records and documents are generally secondary data unless they refer directly to the subject under investigation, when it becomes a primary source. Thus, data can be classified as “primary sources (those involving the “testimony of an eyewitness”) and secondary sources (those involving the testimony or report of a person not present at the time of the events recorded)” (Denzin, 1970: 246). According to this definition, the documents and archives collated in this study comprise both primary and secondary sources of data.

Document Collection

According to Yin (1989: 78), “the most important use of documentation is to corroborate and augment evidence from other sources.” In this case archives are a key source of data used to reconstruct events and activities that have occurred over the past decade. As such, different sources of documents have been used to corroborate others. Initial approaches were made to the secretary of the Professional Firefighters’ Union and the chief executive of the Fire Service to enquire if they would be willing to assist in the provision of data for a study of their industrial negotiations. Under the Official Information Act (1993), I requested information from the Fire Service pertaining to their negotiations meeting with the Union and any other document relating to these events, as in the public sector they could be considered public information. However, the Fire Service was only willing to release documents dating from the inception of the dispute in early 1994 until early 1997. After this date, it was argued, information could not be released as it was relevant to negotiations taking place at the time of the request and therefore was commercially sensitive. At a later stage in the data collection process, I requested any documents subsequent to 1997 that could be provided by the Service. I iterated that such documents would ensure a more objective analysis of the dispute and would counteract any bias resulting from the large quantities of data sourced from the Union. As such, I received documents such as press releases, internal memos, and resignation letters from 1997 to 1999, inclusive. It appeared that the Fire Service was somewhat reluctant to provide information, however, the data they did

release was beneficial in providing the employer's perspective of events. The documents obtained from the Fire Service included correspondence, internal memos, letters and facsimiles to the Union and other groups, position papers and strategic reports.

While awaiting a response from the Fire Service to my request for information, I collected data from other available sources. Using a database of New Zealand newspaper and magazine articles, the Internet, and microfilm, I obtained copies of articles pertaining to the Fire Service from 1993 to 2000. Copies of several hundred articles written during this period were analysed. These were procured from three major metropolitan newspapers (New Zealand Herald, the Dominion, and the Press), several smaller urban- and rural-based newspapers, and business newspapers and magazines, such as the National Business Review and the Independent newspaper. While the majority of the articles referred specifically to the industrial dispute, many of them were also collected to provide descriptive information on the changing context, interest groups, and political processes surrounding the dispute.

The Union was also approached for data relating to their negotiations with the Fire Service. Photocopies of relevant documents dated prior to 1997 were obtained directly from the Union's head office, providing a rich source of primary data. Data subsequent to 1997 was obtained directly from the Union's website on the Internet, as all relevant documents were posted to allow Union members more efficient access to information. Documents received from the Union included notices to members, correspondence from the secretary to Union Locals and among Locals, correspondence to and from the Fire Service and other interest groups, press releases, Fire Service reports and internal memos.

This approach to data collection procured over a thousand pages of documentary evidence from a range of sources. For example, the Union distributed an average of approximately 40 notices to its members each year, resulting in approximately 300 notices collected for analysis. Furthermore, these notices often included attachments of correspondence with various parties, submissions to select inquiry committees, and documents relating to various court cases. The Fire Service provided several hundred pages of documents, including invaluable strategy documents and position papers. These primary sources of data were combined with secondary data from third parties, such as articles from newspapers, magazines and journals, press releases from political parties, and reports released by key interest groups, such as the Business Roundtable

and Federated Farmers. A complete list of the types and forms of documentation collected in this study is contained in Appendix 1.

Advantages of Documents and Archive Records

The most important implication of document analysis for this study is that it allows the investigation of historical events and processes without relying on the recollection of interviewees. The study of documents that were compiled at the time relevant events took place is likely to be more reliable than informants' recall, which may be subjected to bias due to the effect of the passage of time on their opinions and perspective. Therefore, there is likely to be less error due to recall bias or memory failure in interviewees. Another advantage is the nonreactivity of document analysis. The researcher can study the documents as depictions of events without the need to consider the effects of reactions between the researcher and the subject. In interviews an informant's responses may be coloured by the experience of being studied. They may change or word their answers in such a way to make themselves or the subject under investigation appear more important or better in the eyes of the researcher. Archival documents were generally written for a specific purpose and would not anticipate being studied in the future (Bailey, 1987). Furthermore, the use of documentary evidence rather than directly interviewing or observing subjects is a lesser invasion of privacy, particularly in sensitive and confidential activities such as industrial disputes (Hyman, 1972). Thus, the data obtained from documents is also likely to be more spontaneous and may provide, while taking the bias of interpretation into account, a more accurate reflection of the author's perspective or feelings towards the subject. Documents are argued to have face validity because they constitute first-hand accounts of event and feelings towards events and circumstances that have been experienced. However, this validity may be counteracted by the purpose for which documents were developed and the audience for which they were intended.

A further advantage pertains to sampling and sample sizes, where documents may be retrieved from several sources covering the various perspectives of a phenomena more easily than could be obtained from surveys or interview methods of data collection (Bailey, 1987). Access to documents and their analysis is also likely to be less expensive and time consuming (Hyman, 1972). The quality of documents and archival records varies widely, however some are apt to provide high quality depictions of events. For example, newspaper articles and editorials may be written by qualified

journalists, who are skilled in providing social commentaries (Bailey, 1987). While these accounts are considered secondary sources of data, they may be more valuable in helping to understand an industrial dispute than inarticulate accounts written by an eyewitness, or someone participating in the negotiation process.

Disadvantages of Documents and Archive Records

However, it must be kept in mind that documentary data reflects communication among other parties, is written for a particular audience for a specific purpose (Yin, 1989). Information may be purposefully distorted or misrepresented in order to convey deliberate impressions through its dissemination. Public archives are prepared by a person in a particular organisational positions and so they tend to represent the stance of both the organisation and the position of the author, and are influenced by the selective bias of that person (Denzin, 1970). In an industrial dispute it is common for information to be used by a party to further their own objectives and to manipulate the other party's assessment of both parties' utilities. Furthermore, information disseminated by parties not directly involved in negotiations is likely to be coloured by their perspective, sources of information, and orientation towards the issues underlying the industrial dispute. Thus, it is almost impossible to depict the "truth" of what has taken place during a dispute. The authenticity of data cannot easily be verified to determine if an account is an accurate reflection of what occurred or if it is an approximation based on a individual's or group's perspective and influenced by their own personal history and context. Denzin (1970) describes this as a *reality distance problem* whereby the analyst is several times removed from the matter. "*Reality* (subjectively perceived) leads to the *subject's* interpretation, which is *translated* into a document *perceived, interpreted* [sic] *and analysed by the investigator*" (Denzin, 1970: 247). Thus, the analysis of documents becomes a chain of interpretation where each person involved inflicts their own biases and opinions, which may further distort a document's original meaning. It has also been argued that no statement is ever interpreted as it was intended by the orator or author of the statement (Denzin, 1970). The data obtained from documents and other archival material has not been accepted as a literal nor consensual recording of events, but rather the way in which the source of the documents perceived events or wanted them perceived by others. By comparing data obtained from various sources, one can obtain an idea of the various perspectives of the dispute.

A researcher also needs to consider the concept of selective survival in the analysis of documents. In order to be analysed after the event, documents need to be preserved and added to archives. It may well be that day-to-day documents that contained contradictory or valuable data may have been destroyed or that no documents exist to provide crucial information in certain areas. For example, the Fire Service stated that it did not record minutes of its negotiations meetings with Union representatives, which would have provided valuable information about the actual negotiating process. Documents analysed may also be incomplete, or take background knowledge or information for granted. For example, the Union's notices to members assumed its audience had substantial knowledge of previous events and occurrences in the dispute and referred to these in passing. While Union members may have understood the underlying meaning, to a researcher or observer, the information contained in the notice would not have held the same meaning or be interpreted in the manner it was intended. As a result of these factors, there is likely to be a sampling bias whereby some viewpoints or participants' perspectives are more highly represented than others' are (Bailey, 1987).

3.5.2 Interviews

It has been argued that data collection, coding, and analysis should take place concurrently in order to promote the flexibility of data collection (Eisenhardt, 1989). Therefore, data obtained from archives and documentation were analysed before interviews were conducted in order to gain an understanding of the series of events and various perspectives comprising the dispute context. This enabled interview questions and discussion to be based on an understanding of events.

Participants changed several times during the course of the dispute, with key players leaving and new people entering their positions. These created difficulties in gaining access to key informants, as the people who would have been approached if the dispute were being studied in its earlier years are no longer involved. As such, interviewees were restricted to those currently involved in the dispute. The ability to interview these people also resulted in some restrictions placed on the breadth of interviews, with emphasis being placed upon more recent dispute events and issues.

Interviews were based on a key informant approach to obtaining data, whereby an informant is chosen because they hold a senior or leadership position and can speak on behalf of the organisation or where their answers are based on a thorough

understanding of the organisation (Bryman, 1989). Formal interviews were conducted with the Union's national president, the president of the local Canterbury branch of the Union, and with the manager of the Transalpine Fire Region. Further to this, discussions of an informal nature with the Union's secretary, a past volunteer deputy chief fire officer, and an ex-firefighter also provided information. However, these informal interviews and conversations were not taped or transcribed, but still contributed to the provision of a general understanding of the Fire Service and its employment relations. The three formal interviews were taped and transcribed. Interviews with more officials from each party would have been preferable, however, obtaining access to the technology to tape telephone interviews was restricted to a one-off opportunity to borrow the necessary equipment. Therefore, interviews were conducted within the limits of geographical access and the ability to record the conversation. As the interviews were held with members of the negotiating teams who were well informed of contemporary issues, and were used primarily to support documentary data, this did not constitute a consequential limitation of the study.

The interviews were based on a semi-structured format, whereby they were initiated with formal question and developed from there. The questions were purposefully quite general, such as "how would you describe the nature of the employment relationship between the Fire Service and firefighters? An answer to this question might then differentiate between different levels of the Fire Service and different types of firefighters. For example, one interviewee distinguished between a formal and informal employment relationship, while another referred to professional and volunteer firefighters. Interview schedules were developed, but were not strictly adhered to. Questions were open-ended, allowing the interviewee to interpret the question and respond how they saw fit. Flexibility was an essential element of interviewing, where unscheduled questions prompted by a particular answer could be followed up. Thus, the questions included in the schedules indicated a general guideline for the interview to follow, but during the course of the interviews the conversations tended to follow trains of thought or discussion introduced by the respondent. By maintaining this flexibility, valuable information was obtained that may not have been discussed if we had adhered to a strict interview schedule. The interviews answered every question contained within the schedule, but they also went beyond the schedule to answer more specific questions for reasons of interest, clarification, or most importantly, because they were theoretically significant.

The interviews were conducted in settings convenient for the people being interviewed. An interview held with a manager was held in his office during business hours, while the interview with the Union president was held over the telephone while he was on duty late at night. The scheduling for the latter needed to be flexible; when I first called Mike McEnaney was out on a fire call, and obviously the interview could be interrupted at any time. The third interview with the local Union branch President, Steve Warner, was held at his home in an informal setting. Toward the end of this interview Mr Warner was visited by Barry Dent, a past Union president, who joined in the discussion. All interviews were recorded onto microcassette with permission of the interviewee. In some cases, further comments were made after recording had finished, however, I respected the individuals' preference that such comments were not recorded and therefore "off record." As a result, I obtained approximately four hours of recorded material and over 40 pages of transcribed interview data.

Bryman (1989) questions if it is possible for individuals to provide accurate information on the organisation as a whole. During the entire research process, it was taken into account that each piece of data is the interpretation or perspective of a particular individual or group. It is very difficult to get completely accurate information when studying such a topic, as people are biased towards certain viewpoints based upon their role in the dispute, which organisation they are affiliated or can empathise with, and their personal values and biases. An industrial dispute has many facets and which one is engaged depends upon the perspective taken. Thus, this research emphasises this quality and states when a certain perspective is taken. For example, events are presented from both the Fire Service's and the Union's perspective, as each interprets events and processes quite differently. Furthermore, the information obtained from key informants is one of a number of data sources, allowing the interviews to be cross-checked with document materials.

3.6 Data Analysis

In contrast to statistical analysis, data analysis in qualitative research rarely follows fixed formulas or prescriptive “recipes.” While Miles and Huberman (1984; 1994) have provided one of the few attempts to guide such data analysis, others attribute quality to the researcher’s rigorous thinking, presentation of evidence, and consideration of alternative interpretations. Yin (1989) proposes two general strategies for data analysis, one of which this research follows. This strategy recommends that data analysis follow the theoretical propositions that led to the original objectives and design of the case study. These propositions influenced data collection and therefore accorded priorities to appropriate analytical strategies.

This study incorporates a time-series analysis, whereby the findings and interpretations are presented in chronological form. This enables the identification of causal sequences and events over time. Yin (1989) outlines several conditions that theory should specify in the analysis of a chronology. For example, theoretical propositions should specify that some events must always occur before other events or that this sequence of events only occurs on a contingency basis. In this study, however, the theoretical framework from which the research questions originated, does not hypothesise a causal sequence or specific temporal relationships. Instead, it is the purpose of this study to investigate the precepts of the theory and how they can promote understanding of a sequence of events. An important objective of a chronological study is to investigate “how” and “why” questions and to consider the phenomenon under investigation in terms of causal postulates, instead of merely observing trends over time (Yin, 1989).

3.6.1 Coding

After reviewing various accounts of qualitative data analysis (e.g. Yin, 1989; Strauss and Corbin, 1990; Patton, 1990), this study follows Miles and Huberman’s (1984, 1994) precepts for coding qualitative data. In accordance with Yin’s (1989, 1994) analytical approach based on theoretical propositions, an initial set of codes was developed from extant theory (particularly Walton et al., 1994), the research questions, and other variables such as those used to indicate contextual conditions. The original codes were formulated in accordance with Strauss’ (1987; cited in Miles and Huberman,

1994) advice that codes relate to conditions, interactions among actors, strategies and tactics, and consequences.

The initial set of codes was flexible and dynamic. New codes were added as new themes or ideas emerged from the data, while other codes were broken down into composite elements to aid clarification of themes and events. When new codes were added or existing ones altered, the coding scheme was reconstructed to ensure coherency and consistency. The data previously coded subsequently required reconsideration in light of emerging categories of codes (Lincoln and Guba, 1985).

A code is an abbreviation or symbol applied to a segment of words ... in order to *classify* the words. Codes are *categories*. They usually derive from research questions, hypotheses, key concepts, or important themes. They are *retrieval* and *organising devices* that allow the analyst to spot quickly, pull out, then cluster all the segments relating to the particular question, hypothesis, concept, or theme. Clustering sets the stage for analysis (Miles and Huberman, 1984: 56).

The set of codes contained both descriptive and explanatory, or inferential, codes. In a process-oriented case one needs to move from 'telling a story' to the identification of primary concepts and variables in order to build a theory or model. Thus, throughout the process of data analysis progress is made to higher levels of abstraction where the identification of themes and trends integrates data into an explanatory framework (Miles and Huberman, 1994). The focus is on the *process* as a narrative of events used to understand a complex chronology. The context of the case is also of significance in coding, as it gives and influences the meaning given to an event or phenomenon by various actors.

The coding scheme is based upon the format used by the QSM NUD.IST software designed specifically for qualitative data analysis. Due to limited access to the NUD.IST software as most of this research was conducted from home, Microsoft Word 97 was used to organise coding of data. However, I chose to retain the NUD.IST style of using numerical symbols for codes (see Appendix 2 for the list of codes). In this manner the codes are symbolised by numbers rather than the word abbreviations used by some qualitative researchers. Therefore, I was unconcerned with developing word abbreviations small enough to be convenient, but large enough to accurately represent the nature of the code. Instead, a sequence of numbers was assigned to each code. The development of codes was based particularly on the tenets of Walton, Cutcher-Gershenfeld, and McKersie's (1994) theoretical framework. Theoretical terms and

descriptions were assigned to various negotiating tactics illustrating the nature of the overall negotiating strategy. Codes were also assigned to contextual factors and other concepts that were significantly associated with negotiating strategies. For example, sets of codes related to bargaining agenda and restructuring issues, as this enabled the identification of the dynamics of negotiation objectives for each party. Theoretical concerns such as the multilateral nature of negotiations were also accounted for in the coding scheme, with a set of codes pertaining to the role and influence of various third parties. While this system resulted in a lengthy coding scheme, its length distorts its complexity; the use of numerical symbols ensured easy memorisation of codes. The number of concepts coded also allowed for the identification of specific dynamics that a more general coding scheme would have overlooked. For example, the codes relating to specific types of tactics within a forcing strategy enabled a comparison between certain types of tactics. Tactics designed to manipulate the assessment of utilities tend to have different consequences from tactics such as issuing demands and threats, or preparing to create and fulfil those threats (Walton and McKersie, 1965).

In order to clarify the analysis process, the dispute was arbitrarily divided into strategic periods based on clusters of negotiating activity or events. These periods were interspersed with occasions of an apparent lack of negotiating activity or obvious changes in the parties' approaches to achieving their objectives. For example, after the Union pursued a citizens initiated referendum in 1995, there was a period of little negotiation or related activity until the Fire Service announced its intention to implement the community firefighter model, illustrating the distinction between two strategic periods. An analysis of the entire dispute, covering every issue associated with negotiations between the Fire Service and the Union would be a cumbersome task. Further clarification of the study was made in deciding to focus on issues pertaining to firefighters in general. Concurrent to this dispute, employment and contractual issues involving, for example, certain crews or watches, support staff, and mechanics were also disputed and negotiated. However, such activities were considered subsidiary to the immediate dispute. Therefore, this study focuses on analysing what have been determined as significant periods of strategic negotiating activity. It is an arbitrary configuration of strategic events based in part on *a priori* knowledge of the theory pertaining to industrial negotiations, and on an understanding of the case obtained from initial data collection of documents, particularly media coverage of events. To facilitate this approach, documents were analysed with relevant codes and brief explanatory notes

stored in chronological order in Word documents (see Appendix 3 for an example of coding). This enabled the analysis of themes, patterns and events over time, which is an important ability when investigating the dynamics of negotiating strategies. Interview transcripts were coded separately and sections were integrated into the relevant stage of the data chronology.

The numerical symbols proved to be advantageous in analysing the data. Themes and trends were analysed when looking at clusters of codes for each strategic period. Further to this, within the strategic periods studied, sorting the numerical codes within Word documents clustered the codes together. These clusters conferred an appreciation of the commonality, or presence of certain codes. As aforementioned, Walton and McKersie (1965) indicated that the use of tactics based on manipulation of utilities and strike costs would have a different impact on outcomes than the use of commitment techniques. Thus, for example, when analysing code clusters the most commonly used tactics were ascertained to determine the style of forcing applied by management and the tactical responses this elicited from the Union. This was especially useful in identifying a period in the dispute in which the employer's forcing strategy appeared to escalate to unrestrained forcing.

An analytical display suggested by Miles and Huberman (1994) defined as an event listing matrix was used to organise data in a form more amenable to analysis. Critical incidents or happenings were noted in chronological order, serving to aid the process of defining strategic periods and fostered an understanding of the process of events in a visual format. Following the development of these matrices, a narrative focusing on key events and processes was drafted, substantiated by constant referrals to the data and personal memos and notes. A weakness associated with the use of an event-listing matrix is that they are susceptible to the subjectivity and bias of the researcher through decisions made about the inclusion of some events and the exclusion of others. It has been argued that the broadness of the research depends on the resources available, the time available, and the interests of those involved (Patton, 1990). Due to the somewhat overwhelming compilation of data and externally imposed time restrictions on this study, these decisions often needed to be made on an arbitrary and unilateral basis.

3.7 Research Quality

According to Hartley (1994), there is nothing about a particular method that makes it weak or strong. Rather, the merit of a method is argued to depend upon the relationship between theory and method, and how the researcher accounts for the potential weaknesses of the chosen method. Generalisability and representativeness are deemed to be the major weaknesses of qualitative research (Yin, 1989; Patton, 1990; Rose, 1991). However, to advocates of qualitative research these issues do not necessarily detract from the quality of research, and may even be considered to enhance research quality. According to quantitative methodology, representativeness is defined in terms of studying a statistically valid random sample taken from a known population. Further to this, generalisability refers to the ability to extrapolate findings from the sample to its population with statistical confidence. However, statistical surveys are often drawn from localised populations for reasons of convenience, rather than national or complete populations. Thus, it can be argued that even within the realms of quantitative research issues of generalisability are also questionable (Rose, 1991; Hartley, 1994).

Not all case studies are intended to be generalised, in a statistical sense, to a predefined population. “The researcher examines various interests in the phenomenon, selecting a case of some typicality, but leaning toward those cases that seem to offer *opportunity to learn*” (Stake, 1994: 243; emphasis in original). In case study research it can be more appropriate to consider representativeness in terms of a qualitative logic for the selection of a case to study rather than the quantitative logic of sampling from a population (Rose, 1991). In a case study the objective is analytical generalisation, in that it expands and generalises theory rather than statistical generalisation through the enumeration of frequencies. Consequently, however, any extrapolation from a case study relies on the adequacy of the underlying theory and is qualified by the relevant context (Yin, 1989). It is the careful investigation of processes in a particular context that can lead the researcher to infer whether those processes are general or unique to that context. Detailed knowledge of the context, and the processes underlying behaviour within that context, support the specification of conditions under which those processes are likely to occur. In this way, generalisation in qualitative case studies pertains to theoretical propositions rather than populations (Hartley, 1994). Thus, while

surveys depend on the typicality of the sample to provide statistically valid inferences about a population, a case study relies on the “cogency of theoretical reasoning” for establishing valid, logical inferences (Rose, 1991). The case of the Fire Service industrial dispute is not presumed to be representative of other industrial disputes. In fact, the very nature of industrial disputes would make the discovery of a representative case quite difficult. The social psychological processes associated with conflict and negotiating resolutions are unique, dependent on the characteristics and personality of the individuals involved and the nature of the groups to which they are affiliated. Furthermore, the context of a dispute has a considerable impact upon the dynamics of a dispute. Quite simply, each dispute has many individual characteristics and is influenced by the interplay of exogenous and endogenous forces, making each case unique and exacerbating the task of finding a representative archetype.

The quality and credibility of qualitative research is judged upon many criteria, with considerable emphasis given to the use of rigorous techniques and methods of data collection and analysis. Yin (1989) propounds the promotion of construct validity through the employment of multiple sources of data and the establishment of a chain of evidence between data and interpretation. “The combination of multiple methods, empirical materials, perspectives and observers in a single study is best understood, then, as a strategy that adds rigour, breadth, and depth to any investigation” (Denzin and Lincoln, 1994: 2). This study incorporated several of these suggestions except for that of multiple observers, due to the nature of thesis research. The use of triangulation of data sources serves to clarify meaning by identifying different ways the phenomenon under investigation is perceived (Stake, 1994). It can be argued that perception in the context of an industrial dispute is dependent on which side of the bargaining table the individual or group perceiving the phenomenon stands, or if they are indirectly rather than directly involved in negotiations. The use of different sources of data has enabled the identification of different perspectives, whereby these perspectives are explicitly stated as such rather than accepted as factual accounts of the dispute. As a means of improving the rigour of data analysis, Miles and Huberman (1984, 1994) illustrated techniques for data gathering and analysis, which were utilised in this study.

In a backlash against the use of the same criteria to judge various types of research methodology, it has been argued that the case study methodology or approach can be judged in terms of its ability to provide a rich description and detailed analysis, yielding valuable explanations (Marshall and Rossman, 1989; Rose, 1991). Thus,

qualitative methods allow selected issues to be studied in depth and detail, not constrained by predetermined categories or ‘pigeon-holing.’ A criticism of qualitative research has often referred to its lack of objectivity in approaching a subject. However, it has been suggested that this traditional mandate of objectivity be replaced with a mandate to be fair and balanced, taking into account the multiple perspectives, interests, and realities that are readily apparent in qualitative research in the social sciences (Patton, 1990).

3.8 Conclusion

This chapter outlines the broad research questions guiding the study of the Fire Service industrial dispute. The design of any research methodology is guided by the researcher’s implicit assumptions. In regard to this study, these assumptions place its methodological approach within a functionalist perspective. A case study design was considered the most appropriate means of addressing the research questions and the context within which the phenomenon they refer to can occur. Specifically, the emphasis on studying the temporal dynamics of strategic choice suggests that a longitudinal study would be the prime approach. Furthermore, a case study methodology presented the opportunity to fully account for and comprehend the multitude of factors impacting upon the dynamics of an industrial dispute, their interrelationships, and the resultant effect on strategic choice in negotiations.

Due to the inherently processual nature of the phenomenon under investigation, the ensuing case study report follows a chronological structure. It has been argued that “a case study is both the process of learning about the case and the product of our learning” (Stake, 1994: 237). This makes it difficult to differentiate between analytical interpretation and the narrative. As a result, this case study interweaves a narrative of events with an interpretation or explanation of the underlying theoretical principles and concepts, with specific reference to those bearing relevance to the research questions.

Chapter 4.

INTRODUCTION TO THE CASE: THE NEW ZEALAND FIRE SERVICE INDUSTRIAL DISPUTE

4.1 Introduction

For the purpose of this study, the Fire Service industrial dispute will be defined as commencing on February 24, 1994 when the last New Zealand Fire Service Uniformed Employees and Mechanics Collective Employment Contract expired. Failing to meet this bargaining deadline signals impasse in negotiations between the Fire Service and the Professional Firefighters' Union. However, in order to understand the unique context within which this dispute is taking place, it is necessary to detail the nature of the employment relationship and the events that took place prior to the February 1994 deadline. This chapter provides an understanding on the nature of the Fire Service as an organisation, the employment terms and conditions of its professional firefighters, and the nature of the employment relationship. During the initial stages of negotiations after the employment contract expired, the Fire Service undertook an organisational review to determine the nature and extent of changes that could be made to improve efficiency. The process and the outcomes of the review had a profound effect on negotiations, as it was the principal factor contributing to the parties' initial and ongoing inability to negotiate an agreement.

4.2 Development of the New Zealand Fire Service

The New Zealand Fire Service was developed in 1975 with the introduction of the Fire Services Act. This Act served to amalgamate 277 autonomous fire districts under a centralised Service. By 1990, the Fire Service constituted 19 urban fire districts staffed by 1800 professional firefighters and 246 smaller fire districts with 11,000 volunteers. Government partially funded the Service at approximately 25 per cent, with the remainder coming from levies calculated as a percentage of insured property. The levy was calculated at 6.2 cents per \$100 of insured property, collected through insurance brokers, amounting to approximately \$100-\$150m each year.

The Fire Service Amendment Act of 1990 resulted in the restructuring of the Fire Service Commission, the body that has strategic management responsibilities. It includes three independent members and the secretary for Internal Affairs. While the Ministry of Internal Affairs oversees the Fire Service, the Chief Executive and the operating committee have responsibility for general management issues (see Figure 4.1).



Figure 4.1. New Zealand Fire Service organisational structure

* Structure and number of regional managers changed during course of organisational restructuring

4.3 Terms and Conditions of Firefighters' Employment

The standard roster for frontline firefighters comprises of four days on duty followed by four days off duty. The four days on duty are worked in two 10-hour day shifts followed by two 14-hour night shifts. Day shifts run from 0800-hours to 1800-hours while night shifts operate from 1800 hours to 0800 hours. The second day shift finishes at 1800-hours, followed by the next shift starting 24-hours later at 1800-hours on the third day. That shift finishes at 0800-hours and the next commences at 1800-

hours later that day. While the last of the four shifts finishes at 0800-hours, the rest of that day is considered to be the first day off duty. The day shift prior to a firefighter's first rostered day shift and the night shift immediately following the second day shift are both considered overtime shifts. The day shift immediately before the first night shift worked and the night shift following the last rostered night shift are also overtime shifts. It is the employees' choice to make themselves available to work these shifts and receive an allowance for doing so. However, any firefighter may be called upon to work any of these overtime shifts and a reasonable excuse must be provided if unable to do so.

The shifts consist of a mixture of routine hours and downtime. Routine hours are set aside for tasks such as equipment maintenance, cleaning, snap drills and inspections. From Monday to Friday routine hours comprise eight hours during the day shift and four hours during the night shift, whereby three hours are worked at the start of the night shift and one hour at the end. On Saturdays routine hours comprise of four hours during the day shift and three hours at night, with two hours worked in the evening and one routine hour the following morning. On Sundays and public holidays one routine hour is worked during the day and two routine hours, one at night and one the following morning, during the night shift. There is also an allowance for one hour of personal fitness training during each shift worked. All rostered hours are paid at the full rate, equating to 42 hours with 40 paid at normal time and two hours of overtime.

All remaining hours are defined as 'downtime,' during which time if nothing else is necessary which is required to maintain operational readiness and efficiency, personnel may do private study, or have rest periods, remaining in uniform and on station with the appliance and crew at all times. This is the responsibility and at the discretion of the Officer in Charge. However, according to a former firefighter, Adam Pleydell:

Any callout response to an incident is treated as such and hours make no difference when the bells go down. You are still required to be in the appliance, kitted up (firefighting uniform) and out the door within a minute, and is in fact within 35 seconds (we timed it one day), and downtime was no slower, in fact faster due to not being involved in station work, drill or familiarisation of buildings. When you are "on duty" which is "on station," and as such "on an appliance," you are at a state of continual readiness which could go at any time regardless of "routine hours" or "downtime." ...So hence all hours "on duty" are regarded by firefighters as being "on

duty,” and NOT distinguished by “routine hours or downtime” except for what is done around station. A firefighter for example in downtime could not go “down the shops” or “out to lunch” or “pick up the kids.”

Every 20 weeks firefighters are entitled to 14 days leave in addition to four days prior to taking leave and two days afterwards before commencing their next shift. After seven years of service a firefighter receives three extra days of service leave each year. There are a number of allowances incorporated into the employment contract, including allowances for qualifications and certificates, travel allowances when relieving at another station, and a shift allowance. Professional firefighters’ salaries range from \$39,000 to more than \$60,000 per annum including overtime payments.

4.4 Fire Service Funding

During the early 1990s the Fire Service experienced budget cuts as a result of a number of factors. An increasing trend toward privatisation and improving efficiency within the public sector resulted in cuts in the government budget for the Fire Service. Initially the Service was to be exempt from the 5 per cent budget cut sought throughout the public sector. However, in August of 1993 the government cut the Service’s budget by \$8m, from \$178m to \$170m for the 1993-1994 financial year. This was argued to save the government only \$500,000 as it provides only 8 per cent of the budget. The funding ratio of 92:8 is prescribed in statute and the government cannot decrease their contribution without effecting a similar change in the levy or enacting legislation changes altering the levy ratio. According to Derek Best, Secretary of the Union, the cut constituted blatant theft of public money and he predicted cuts to staff levels, putting lives and property at risk (Dominion, 1993a).

Due to the highly competitive nature of the New Zealand insurance industry, insurance companies found the most attractive means of competing was to use offshore insurance schemes in order to evade payment of the Fire Service levy and reduce premiums. At the instigation of the Fire Service Commission, the Fire Service Amendment Act (1990) incorporated clauses to make such evasion illegal and restore funding to its proper level (Gillon, 1998). The levy payable on insurance policies was considered a significant expense to businesses, who argued that the levy paid on property value disadvantaged business owners and rural districts serviced by volunteers

and benefited homeowners and the uninsured. The New Zealand Business Roundtable argued that businesses were paying a disproportionately large levy for the services they used. Consequently, interest groups such as the Business Roundtable, the Insurance Council, and the Federated Farmers began lobbying for a reduction in the levy. However, the Fire Service contended that the Business Roundtable's report was based on outdated figures. They reported that the commercial sector contributed 25 per cent in levies, generated approximately 50 per cent of callouts and about 85 per cent of false alarms during the period 1988-1992, in addition to receiving 90 per cent of fire safety services. The Union was also of the opinion that the existing levy structure was inequitable. They proposed alternative sources of funding in the form of levies on ratepayers and vehicle owners as a means of addressing the problem of uninsured 'freeloaders.' For example, the levy payable on car insurance covers fire risk to the vehicle but not general accidents while approximately 30 percent of Fire Service callouts in the Auckland area were to road accidents, indicating a gap between funding sources and users of the Service. In response to calls from various interest groups and in light of budget cuts, the Minister of Internal Affairs conducted a review of the Fire Service in 1993.

4.5 The Fire Service Review

Both the Union and management agreed on the need for a review of the Service, however, the Union asked that the review had wide terms of reference in order for all aspects of Fire Service activities to be included. They also asked that the review committee membership be structured so that confidence could be held in the impartiality of its conclusions. These requests appeared to stem from a concern that if external consultants were used the results may be impartial due to the contributors having no prior experience with the Fire Service and as such, some issues may be overlooked or not fully understood.

An initial report included findings that, while the Service was operated efficiently and effectively, it was overly bureaucratic with higher than necessary salary expenses. Recommendations included increasing the Service's emphasis on fire prevention, a smaller Fire Service Commission, and new employment contract terms for firefighters (Bassett, 1997). With regard to employment and work practices, more

specific recommendations suggested investigation of potential improvements in shift work productivity, reconsideration of minimum crew levels on appliances and of plans for new stations. It was stated that the Service could be improved by restructuring fire crews and by the removal of restrictive work practices and penal payments. The Union agreed that the efficiency of the Service could be improved. However, firefighters believed that the existing routine hours could be made more productive and efficient before resorting to increasing the number of routine hours worked.

4.6 Organisational Restructuring

On advice from Maurie Cummings, the Commission's new chief executive in 1993, the Government decided to retain the centralised, national structure of the Fire Service. However, due to the scarcity of practicable competition for the supply of its services, it was also decided that fire crews would be restructured and efforts made to reduce restrictive work practices and penal payments (Bassett, 1997).

It has been argued by those critical of these work practices that during a regular week firefighters spend 17.5 hours doing routine work. Furthermore, because firefighters are allowed to sleep while on night shift they are able to have nights of uninterrupted sleep when there are no callouts and thus be able to have or share second jobs on their days off. These arguments contributed to the rationale underlying the reforms proposed for the Fire Service. Salaries and firefighting costs comprise over 80 per cent of the Service's expenses and as such are expected to be the prime area for cuts to meet a reduced budget. The reforms are intended to reduce these costs and to increase the funding that can be allocated to fire prevention and safety activities and research projects.

Firefighters' have argued that it may appear that firefighters' shift work allows them considerable time off, however, they still have to be at work for 42 hours each week and only have two weekends in every eight off duty. It has been documented that the shift systems firefighters work have a significant effect on poor nutrition and sleeping habits, and may have adverse consequences for family life. Shift work can be defined as occurring when an employee is awake and working during times in which the body, which is diurnal or day-oriented, would prefer to be asleep. Evidence has been provided showing that shift work can have medical, biological, and social effects on

workers (Glazner, 1992). For example, firefighting has been considered by many studies to be one of the most hazardous occupations in America (Hoover, Dowling and Bouley, 1996). Occupational stress can also affect productivity and performance, in addition to causing substance abuse problems, where some studies show that fire personnel experience a higher percentage of drug and alcohol problems than most other occupations (Shearer, 1989).

According to the Fire Service, only 5 per cent of callouts are to structural fires, with just over half of all callouts made to actual fires. The remaining callouts result in firefighters attending hazardous substance emergencies, vehicle incidents, other emergencies, and false alarms, most of which are generated by private alarm systems. It is these statistics that are considered to proffer support for proposals to reduce the number in selected appliance crews and increase flexibility with regard to the number of appliances responding to a callout. Acting chief executive, George Roberts, stated in 1992 that a two-year study of Service responses showed that, in some cases, more appliances were responding to callouts than were actually required by the standards of cover. According to Mr. Roberts, the Service needed to start distinguishing between actual fire calls and those calls describing such incidents as “a smell of smoke.” While it was up to each regional commander to decide how many appliances should respond to callouts, Mr. Roberts could see no problem with sending fewer appliances to some incidents (The Dominion, 1993b). However, firefighters argued the proposed changes would reduce response times and jeopardise public safety; “when you’re looking at a fire situation where someone is hanging out the window with their butt getting burned, even seconds is a considerable time” (Dearnaley, 1993a).

The review also prompted reconsideration of the number of crew on each appliance, with suggestions to cut some crews from four to three firefighters. There were four riding positions in effect at the time of the arguments, as reported by Adam Pleydell: “(1) a branchman; (2) water man and backup; (3) driver/pump operator and messages; and (4) the officer in charge (OIC).” The Union put forward the argument that the Service was currently operating in accordance with internationally accepted manning levels for each appliance and that station manning had been deliberately planned to meet potential demand. For example, in 1993 the National Fire Protection Association of America adopted the standard that a minimum of four firefighters should be present at a structure fire as a Tentative Interim Amendment (Erwin, 1995).

In response to the Service's budget cuts, the Union requested that areas other than staff cuts be considered for cost cutting possibilities and offered to help identify these. For example, the Union proposed that the Fire Service merge some of its resources, such as buildings, training and equipment, with those of the ambulance and civil defence services in order to avoid duplication and reduce expenses. According to the Service's personnel director, Geoff Summers, the Union had made a suggestion that the Service had not thought of or considered in this case. The suggestion made was, rather than destaffing specialist appliances and using normal crew to operate them when required, the specialist staff could be deployed elsewhere, such as locations where rapid population growth had outstripped firefighting resources. The Service also considered using these specialist staff to fill in and reduce the overtime worked by standard firefighters, thus helping to alleviate the high overtime costs. Volunteer firefighters joined in the staffing debates, claiming that the policy of calling in off-duty professional firefighters and paying them overtime had cost the country millions of dollars when volunteer firefighters could have been called upon at lesser expense. Volunteers also argued that any cuts in firefighter numbers would not necessarily have the effect that the Union warns of, as volunteers will be able to cover the reductions in some areas, such as Tauranga, Rotorua, and Taupo (Dearnaley, 1993b).

Results from the first stage of the review were announced in December 1993. This stage included seeking the views of over 7000 firefighters and support staff on the structure and management of the Service. A common perception was that there were too many people in management and that the Service had become too centralised and bureaucratic. The Union stated that while firefighter numbers had remained relatively constant over the past 18 years, administration staff numbers at headquarters had increased from 30 to 130.

This internal review would be compared with an externally completed one, in addition to the results of a comparative study of overseas fire brigades and similarly structured New Zealand organisations. The information obtained from these studies was to be used to develop a five-year plan. Within this document, and supported by existing legislation, the Fire Service would be responsible for the day-to-day operations, the Fire Service Commission would hold responsibility for setting policy, and the Internal Affairs Minister retained control of the Service's budget.

4.7 The Nature of the Employment Relationship

The result of these events and activities is that the Fire Service and firefighters, represented by their Union, were trying to renegotiate the parameters of their relationship within an environment undergoing significant change. The Service is bound by legislation to be a 'good employer,' to both negotiate and consult with the Union (Boxall, 1991). Issues that effectively change the terms and conditions of the employment contract require negotiation, while other aspects such as potential restructuring and staffing changes are expected to be discussed through consultation procedures. As official bargaining representative for the majority of firefighters, the Union must be recognised as the formal channel through which the Service can communicate about employment matters with its staff.

In this case, the employer had been attempting to restructure the organisation in an effort to improve its efficiency and flexibility, compounded by the pressures of a shrinking budget and interest group lobbying. The Union, on the other hand, was trying to achieve improvements in firefighters' wages and conditions, to represent the collective employee group in maintaining or improving their standard of living and rewards for working. As firefighters had not received a wage increase since 1991, there were also cost of living issues to be addressed. Many employees have obligations and financial commitments, and had worked to win their existing terms of employment. It appeared reasonable to assume that firefighters would not accept cuts in their employment benefits without putting up a fight.

A number of rollover contracts carried the parties through the late 1980s as a result of failing to agree on new terms and conditions of an employment contract. Thus, while the Union may have won, and the Fire Service conceded, improvements in pay and conditions in previous decades, the 1990s witnessed the effects of public sector reforms and increasing emphasis on efficiency. The extended period of rollover contracts had carried the Service through a phase in which employment practices changed in the wider labour force, but remained unchanged within their own workforce. As a result, the Union appeared to be disconcerted by the extent of Fire Service demands for concessions in allowances, leave entitlements, and increased routine hours when it sought to bring its work practices into line with those of other employers. The Union considered its pay claims modest in comparison to the demands from the

employer. At about the same time as the employer increased the scope and extent of their demands, the Government introduced the Employment Contracts Act (1991). This had a relatively minimal impact on negotiation structure and processes during the first few years after implementation. While it has been shown that the ECA generally resulted in declining union membership and a move from collective to individually based employment contracts, the strength of the Professional Firefighters' Union has enabled it to resist following these trends so far.

The employment relationship between firefighters and the Fire Service prior to 1994 appears to be of a traditional arms-length nature and relatively, but not excessively, adversarial. For example, arguing the Service's approach was to focus on increasing productivity through increasing hours for a small pay rise and various concession, the Union instead wanted recognition and rewards to be used to motivate employees. According to a Union newsletter in December 1991, "our employer, both by word and by deed, has made it clear that a confrontational, unilateral and non-cooperative approach is what he wants." A number of Employment Tribunal and Court applications and hearings were heard in the early 1990s, including those against the Fire Service for failing to meet its statutory obligations and for attempting to unilaterally attempt to change the terms and conditions of the employment contract. The Fire Service was also successful in laying a charge against the Union for unlawful industrial action involving breathing apparatus training in Wellington in September 1993. Thus, the parties were engaged in adversarial relations prior to this dispute, which tended to distort each party's perceptions of the other's motives and intentions (Watkins, 1999).

4.7.1 Industrial Action in the Essential Services

While there is no specific international standard, the International Labour Organisation recognises that prohibiting the right to strike in the public services is not an infringement of international freedom of association principles. However, this is to the extent the prohibition is limited to employees in their capacity as agents of the government or in essential services, as long as appropriate compensatory guarantees are provided. The essential services are properly defined as those whose interruption would endanger the life, personal safety, or health of all or part of the population (Yemin, 1993).

The right to strike in the public sector, particularly in the essential services, is often conditional with rules of limitations regarding the use of industrial action. There

may be a requirement of advance notice, both to ensure that disputes settlement procedures can be initiated and in order for public employers to organise alternative methods of meeting the public's needs. Prior approval of the strike action by the majority of employees may be required to demonstrate that support for strike action by the employees involved. In some countries there is also a requirement that employees maintain a minimum service for the duration of a strike. This method appears to be gaining approval as a method that balances the needs of public employees and the needs of the public (Yemin, 1993). In New Zealand, the Employment Contracts Act defines those services considered 'essential' and requires them to give 14 days notice of an impending strike or employer lockout. Furthermore, the notice of a strike or lockout needs to explicitly state the nature of the action, who it involves, when it will commence and end, and finally, where it will take place.

Some public services provoke questions that are politically, socially, or ideologically sensitive. The govt provides such services in part because of society's perception regarding the nature of the service and the public need for it, and because alternatives to governmental provision of such services are often economically impractical (Wellington and Winter, 1988). As a result, decisions impacting upon the provision of these services are more likely to be contested and are more urgent than decisions affecting privately offered services. The professionals who perform these services tend to be interested in the philosophy upon which their work is predicated, for example, in the health or public safety services. Thus, performing this work is not merely a job performed for wages or a salary. According to the Firefighters' Union president, Mike McEnaney, "firefighting isn't a job, it's a vocation." It follows that such employees are likely to challenge decisions affecting the nature of their service and employment. Given the nature of reforms of the New Zealand public sector and the implications for the Fire Service, it could have been predicted that the plans for reform in the Service would arouse the ire of firefighters and create controversy.

4.7.2 The Multilateral Nature of Negotiations

The influence of various interest groups has had a profound impact upon the Fire Service industrial dispute. Interest groups can be defined as formal organisations having the political function of representing the interests of specific groups and influencing the government to act in favour of those interests (Mulgan, 1997). These

groups will often engage in overt lobbying activities designed to persuade the government of their point of view. The underlying premise is that governments generally pay some degree of attention to these groups as they wield the potential to influence large groups of voters (Mulgan, 1997). While the Fire Service has responsibility for its negotiations, external groups have influenced the nature in which this responsibility is conducted. For example, the Business Roundtable is perceived as an organisation that represents the interests of large businesses to the government. It is an organisation that espouses the free market ideology, supporting competition and individual contracting in the labour market. The networks and resources supporting this organisation place it in a powerful position to lobby the government and other parties in the mobilisation of their ideology (Deeks, 1994).

Funding cuts and the threat of forthcoming review proposals had adverse effects on the employment relationship, with both parties engaging public relations professionals in 1993 to mount media campaigns. The public nature of the service and the strength of opposing views have meant this dispute has largely been played out in the public arena. A variety of interest groups have also played their roles and expressed a range of opinions. Publicity and interest surrounding dispute issues may have served to strengthen the commitment of each party to their positions.

Traditional collective bargaining theory is generally predicated on the assumption that two parties are engaged in bilateral negotiations. However, this theory may need to be modified when bargaining is taking place within the public sector, as the interests at stake are more diffuse rendering the bilateral paradigm less accurate (Cohen, 1988; Lewin *et al*, 1988). In addition to the economic costs associated with failure to reach agreement, there are also political costs and implications. However, the nature of the governance structures and autonomy of governmental units and entities maintain the relevance of the strategic theory of negotiations. Managers are responsible for employment relations issues, including conducting negotiations with employees or their representatives. In doing so, they engage particular strategies and tactics in order to obtain their objectives, just as private sector managers do. This preserves the bilateral nature of negotiations to a degree, but the interests of other groups also need to be taken into account. However, the need to consider the interests of external groups in negotiations is also becoming increasingly common in the private sector, where organisations are finding that stakeholders such as the community, customers, and suppliers may exert an influence on the negotiations process (Walton *et al*, 1994).

4.8 Reform of the New Zealand Public Sector

The compulsion to maintain competitiveness in the private sector has also impacted upon the public sector through the need to sustain the efficiency of the national economy. While the public sector typically lacks the competition faced by producers and service providers in the private sector, the public sector also needs to promote flexibility and efficiency in its operations. Thus, the managerial ideology promoted by groups such as the Business Roundtable has also pervaded the public sector. The argument that the principles of management as applied in the private sector could be equally applicable to the public sector presents one driving force behind reform of the public sector in New Zealand (Deeks, 1994).

There are common features of the modern public sector management model that has become a trend across industrialised nations. These include a focus on reducing costs and increasing managerial accountability, disaggregating bureaucracies into separate units, and the decentralisation of management authority (Warrian, 1996). The core government function of policy and strategy development has been separated from service provision, whereby service providers are given performance targets and output objectives. New Zealand commenced its economic reform in the mid-1980s in order to overcome the constraints of an overly rigid and regulated domestic economy. Since then, “every aspect of New Zealand’s economic management and government administration has been subject to fundamental review and reform” (Scott, 1996: 5).

The changes had significant implications for public sector labour relations. Previously the State Services Commission was the legal employer of all government employees. The State Sector Act (1988) clarified the new structures and responsibilities resulting from the reforms, including the move to make chief executives the legal employers of their staff (Scott, 1996). This served to decentralise employment relations issues to the unit or agency level. A key precept underlying public sector reforms is that the Government perceived its management performance as adversely affecting macroeconomic performance and the attainment of its own priorities. To this end, the reforms included the restructuring of government administration to promote efficiency through competition, allowing managers the freedom to manage while tightening accountability and monitoring controls (Scott, 1996). Thus, the Government removed itself from managing day-to-day operations of many publicly provided services. The

Fire Service Amendment Act (1990) relegated the Commission to a non-executive role, with day-to-day management issues, including employment relations matters, becoming the responsibility of the chief executive. The Government is viewed as a third party rather than employer in the Fire Service negotiations. Despite this, both the Commission's and the Government's influence remains pervasive, with the Government ultimately controlling the Service's budget and demanding accountability.

The driving forces behind the reforms impacted upon employment relations quite significantly, changing the structure and processes of the employment relationship. According to Warrian (1996: 27), "the system is now confronted with a qualitatively different factor: fundamental economic constraint." Thus, public sector employees found their traditional sources of power undermined by the employer's inability to concede to a union's wage demands. Furthermore, public sector unions found it difficult to preserve the *status quo* of their terms and conditions when confronted with chief executives who have been charged with the task of cutting costs as far as possible. It has been noted that activist unions are still interpreting the revolutionary reforms as evolving from a political imperative rather than out of economic necessity (Warrian, 1996). This perspective works to drive a wedge between employer and employees, where the employer is acting upon economic imperatives and constraints while the Union discredits the import of those constraints.

The Union considered the Government to be 'pulling the strings' of the Fire Service, and argued that negotiations were unreasonably constrained by a fixed budget. While the Union professed to have based its demands on an understanding and acceptance of the economic climate and conditions at the time, the Fire Service was limited in its room to move. It was required that any concessions made by the employer had to be offset by concessions or cuts in other areas to remain within budget. This appeared to frustrate the negotiation process, with the Union feeling their role had become confined to simply being part of the process to determine the distribution of a fixed budget. However, both parties remained firm in their bargaining positions, with the result a number of simple rollover contracts until the last collective employment contract expired in February, 1994. A Union newsletter in May 1991 stated,

[Firefighters] need to stick together and develop a strategy to win new conditions, enhance existing conditions and achieve a payrise. We will need to pick the right time for this. Economic factors, which go in cycles, and times will improve sooner or later. We need to have a strategy that nullifies the anti-worker views of the State Service representatives who pull our employer's 'strings' at negotiations as

well. ...Members should be reminded that it has always been the custom and practice that any ground given during hard times is always made up at a later date. It is to this end we intend to place out efforts when the climate improves.

4.9 Conclusion

The preceding analysis provides an overview of the multiple factors influencing negotiations between Fire Service management and the Union. These include formal review processes aimed at instigating organisational reform, lobbying from interest groups regarding funding mechanisms, and the complex processes involved in negotiating in a public sector environment. The strategies and processes of negotiations cannot be isolated from the effects of the external environment. Strategic decisions are not made within a vacuum, rather, these factors and others interact with the events occurring during negotiations.

It is within this context that the Fire Service and the Firefighters' Union are trying to negotiate a new collective employment contract. To overcome the considerable obstacles imposed by forces external to negotiations, each party engages a variety of strategies and tactics designed to manipulate the parameters of the negotiation relationship.

Chapter 5.

THE FIRST TWO YEARS: IMPLEMENTATION OF A FORCING STRATEGY

5.1 Introduction

The last collective employment contract to be negotiated between the Fire Service and the Professional Firefighters' Union expired in February 1995. Soon afterwards, a review of the Service was concluded, introducing what were considered imperative restructuring proposals. This introduced quite ambitious objectives to the managerial agenda, which impinged upon contract negotiations with the Union. Management's agenda emphasised the need for efficiency and flexibility, including significant staff reductions and the removal of many employment contract clauses. Alternatively, the Union sought to improve the pay and working conditions of its members while, under the threat of restructuring, retaining as many of their jobs as possible. When viewed figuratively across the bargaining table these objectives appeared to be antithetical, engendering a distributive bargaining approach to contract negotiations.

This chapter outlines the series of events leading to the development of management's objectives and the factors that contributed to the choice of negotiating strategy. From the initial choices, the unfolding dynamics of negotiating strategies and their tactical implementation can be followed.

5.2 Negotiating after Expiry of the Collective Employment Contract

Substantial negotiating activity took place leading up to the expiration of the collective employment contract on February 26, 1994. The last negotiations took place on February 16 and 17, during which the employer offered a 1 per cent pay rise with a simple rollover contract for nine months until November 30, 1994. When the Union rejected this offer as inadequate, it was withdrawn and negotiations were adjourned in a state of impasse.

The Review process initially overshadowed contract negotiations. While such reviews are relatively commonplace in the public sector, the magnitude of that undertaken in the Fire Service combined with rumour and speculation regarding the extent of possible

changes, particularly to firefighters and the Service's operational structure, fuelled interest from a variety of interest groups and firefighters themselves. The Fire Service stated that pay talks and the Review were to remain separate issues, however, the Union claimed that the Fire Service introduced the review to pay talks by refusing to negotiate while it was underway. In response to rumours of substantial job losses, the Union added job security issues to their bargaining agenda, asking that existing staff levels be guaranteed for at least the term of the next collective employment contract. A further point of contention related to pay claims, with the Union setting relatively high demands in compensation for a wage freeze of four years. This contrasted quite significantly with Fire Service objectives to minimise, and preferably reduce, labour costs.

5.2.1 The Review Process

An oft-repeated Union argument was that they were effectively excluded from the Review process beyond the initial stages of seeking employees' opinions. As the Fire Service prepared to announce the Review proposals, the Union felt they should have been allowed some degree of participation in the decision-making and solution development processes. Thus, it was argued that the Review proposals were determined unilaterally with recommendations made by the very groups who had been identified as "flawed" – those of management – and without the input of frontline staff with expertise in the Service's operations. According to a Union notice to members, "it is sad that a tremendous opportunity for setting the Fire Service right for many years has been corrupted and prostituted by bloodyminded arrogant incompetence." The Review progress prompted reports that staff morale was suffering the effects of unilateral changes and speculation that between 150-550 jobs would be lost.

At the end of March the Review findings and plans for restructuring were finally announced to all interested parties, including firefighters, in a special television broadcast. On Tuesday March 29, the Fire Service held briefings with local government representatives, the insurance industry, farmers groups, big business, and the media. Formal review announcements were to be televised at 6am the following morning, with a Union briefing to be held later that day at 3pm. Press statements and media releases were embargoed until the televised broadcast, however the chain of events still resulted in the release of review proposals in the media before the Union received a briefing. It is in this manner that many firefighters learned of the cutting of approximately 330 frontline jobs,

60 senior operation staff and 60 support staff jobs. In effect, the Union was the last to be formally notified of the proposals regarding the future employment of its members. When the Union denounced these tactics, the Service stated that it did not intend to meet with interest groups and the media until the threat of a strike arose. Thus, the Fire Service sought and received the support of key interest groups first, pre-empting Union attempts at doing so. According to the Union, it “spoke volumes” that the BUSINESS ROUNDTABLE were apprised of the review results before firefighters. Derek Best stated that this reflected “...a crisis with confidence in the Service to the extent that there is no way that [chief executive Maurie] Cummings and his team could front up to firefighters and try to explain this review. That’s why they’re hiding behind a television screen” (The Dominion, 1994: 9).

5.2.2 Union Strike Threats

Almost immediately after the CEC expired, the Fire Service sent a notice directly to its employees in an effort to overcome what it perceived as were rumours and misinformation provided by the Union. With both parties having assumed a firm, committed position on bargaining issues, the Fire Service may have been attempting to undermine the authority of the Union leadership and their ability to act as gatekeepers of information channels to frontline employees. Negotiations stalled in March, with each party claiming it was the other who walked away from the negotiating table. Subsequently, the Union organised national stopwork meetings to discuss the option of taking industrial action. Two ballots of members were held, with overwhelming support for rejecting the employer’s offer and for holding strike action. Two days later the Union filed Notice of Strike Action, in which all operational members were to refuse all duties other than a response to fire calls and other emergency incidents, to be held at the end of March. To counter public support for the Union, Fire Service chief executive Maurie Cummings informed the media of a plan to offer a new deal to the Union which incorporated rewards for productivity gains in addition to a 1 per cent pay offer. The chief executive claimed firefighters would appreciate “greater responsibility and empowerment from more satisfying and meaningful jobs”, and more pay due to a changed shift system (New Zealand Herald, 1994: 2). However, the Union condemned the offer, fearing the new shift system equated to more hours for less pay and consequently, adverse effects on stress and staff morale.

The Fire Service applied to the employment court for an injunction to halt the strike action, predicated on confusion as to the nature of the industrial action. The Union responded by withdrawing the strike notice, stating that the ECA (1991) made it easier to organise a full strike rather than a partial one. Consequently, the Union focused on balloting members to hold two 24-hour strikes on April 26 and 29. This was the first time notice of a total strike, to the point of firefighters refusing to attend emergencies, had been threatened in the Fire Service. The Union was striking over what it perceived as the inadequacy of a 1 per cent pay increase, while the employer argued that as part of the package, firefighters would also receive rewards for productivity gains and that the pay offer was made in light of that.

5.2.3 The Fire Service's Strategic Approach to Negotiations and the Implementation of Restructuring

Management Agenda and Strategic Choice

The managerial agenda was predicated on the need to achieve efficiencies through improving work practices, and spending on expenses and capital assets. This was expected to be achieved through the reduction of staff numbers, enhanced flexibility in firefighters' working hours, and the removal of many benefits and allowances from the employment contract. It was the Service's objective to continue to provide the same level of service while avoiding station closures by reducing staff numbers and increasing reliance on volunteers. A new shift system was to be negotiated with the Union, involving increased hours (from 42 to 56), with a 1 per cent pay rise and a nine-month rollover of the existing contract while restructuring was negotiated. Furthermore, concern about the rising average age of firefighters led to the development of new physical fitness standards with early retirement to be offered to those who did not meet these requirements. The Fire Service claimed the review uncovered that many firefighters felt they were "past it physically and burnt out emotionally from attending fatal fires and car crashes" (Williams, 1994: 1). During this stage of the negotiations the Fire Service was still attempting to maintain a distinction between restructuring issues and negotiations, which were conceptualised as basic pay talks by the employer. The Service informed the Union that they would prefer review issues were omitted from negotiations. The employer pursued the settlement of an interim contract based on a small wage increase with a term sufficient

to cover the period required for the consultation and negotiation of an agreement regarding restructuring and the resulting changes in employment.

The ambitious nature of management's objectives was a key influence on strategic choice. As the restructuring involved specific and categorical changes to the work practices and employment contract of firefighters, it could be assumed that the Union would not be easily persuaded of the value of undertaking such reforms. The changes would have a significant impact upon the overall remuneration received by firefighters. While they would receive more money from working longer hours in addition to a small pay increase, the employer was also seeking to eliminate many of the allowances and benefits incorporated in the prevailing terms and conditions of employment. The nature of the Fire Service as a publicly funded crown entity affected the likelihood of firefighters accepting a business rationale for reform, particularly if pitted against the Union's public safety argument.

In such circumstances an employer tends to predict a negative response from a union, thus, the employer was not attempting to persuade the Union of the feasibility of the change proposals (Walton and McKersie, 1965). Instead, the employer endeavoured to negotiate an interim agreement before commencing discussions on how the restructuring proposals could be implemented. However, the interim contract was expected to include an agreement from the Union acknowledging that restructuring would take place, including a change to a 56-hour week roster. The Union was not convinced that an interim contract was the best course of action. They established and retained commitment to negotiating an agreement regarding staffing guarantees, fearing that a failure to obtain such a clause in the employment contract would have severe consequences for firefighters. This ongoing commitment to obtaining a clause on staffing levels frustrated the development of negotiations for an extended period, leading to a future decision from the Union to initiate a referendum on the issue. Thus, at this stage, the parties were disagreeing on how they could come to an agreement on issues as well as disagreeing on the type of issues that needed to be agreed upon.

Strategic choice theory highlights the tendency to adopt strategies that are more appropriate to the benefits or outcomes that have been given higher priority (Pruitt, 1983, Walton et al., 1994). The Fire Service disseminated through the media its perception that the reforms would result in empowerment and more satisfying jobs, however it did not explicitly foster greater commitment in the workforce. The minimal emphasis on employee commitment may have derived from the tendency of firefighters to be

committed to their jobs and the service they provide to the public rather than the organisation or employer as such. Thus, management's objectives were based on achieving substantive outcomes from contract negotiations. Specifically, the employer was attempting to minimise the number and impact of contract clauses in order to promote organisational flexibility.

According to Pruitt and Carnevale (1993), strategic choice may also be a function of the extent to which a party is concerned about the outcomes desired by the other party. The Fire Service indicated it held little concern for the Union's outcomes and vice versa, as illustrated by a history of distributive bargaining and adversarial behaviour. This apparent lack of concern was augmented by the employer's attempts to bypass the Union and negotiate directly with employees. Furthermore, by engaging in distributive bargaining designed to achieve significant concessions with provisions in a substantially different contract also fails to indicate a great degree of concern for employees' outcomes.

The nature of restructuring objectives and the Union's expected response emphasised the suitability of a forcing strategy for achieving those objectives. In order to effect such a strategy requires analysis of one's bargaining power, whether actual or perceived. A forcing strategy requires actual, or an opposition's perception of, coercive power sufficient to influence the other party. Influence can be manifest through the dependence of the Union and its members on the Fire Service. For example, the few alternative employers of firefighters are restricted to settings such as airports, ports and large organisations whose production processes involve dangerous substances. As such, few of the approximately 1800 professional firefighters could expect to find employment as firefighters if their contract was terminated with the Fire Service. Furthermore, significant levels of general unemployment could find many jobless firefighters without employment opportunities.

In terms of the dependence model of bargaining power, it could be argued that the Union wielded greater bargaining power when the costs of agreement and disagreement are considered. If the Union disagreed with the employer's demands then the *status quo* would prevail, while agreement would procure terms and conditions that were inferior to the *status quo*. Conversely, if the Fire Service disagreed with the Union's demands it would fail to implement the planned restructuring and retain the *status quo*, but if it agreed then reform could be achieved within the parameters of Union willingness. Therefore, it could be argued that for the Fire Service the cost of disagreeing was higher than that of agreeing, relative to the costs faced by the Union. The employer's cost of disagreeing was

exacerbated by the Union's threat of industrial action, which held the potential for disastrous consequences for the public as a result of the parties' impasse. However, the Fire Service was not prepared to compromise on the nature of the reforms and instead established steadfast commitment to its objectives. It also appeared unwilling to back down in the face of strike action, despite firefighters' doubts that sufficient contingency plans could be mobilised.

The resources and constraints impacting upon an employment relationship have consequences for bargaining power. The Fire Service's resources are somewhat limited as while the public fund the Service, the use of those funds by the Service is restricted by an externally-imposed budget. This serves to constrain the breadth of options available to the employer in dealing with the Union. The Fire Service does, however, have the non-monetary resources inherent in claiming the support of the Government and powerful interest groups. In response to various constraints, seeking the support of key groups has become a prevalent tactic in the Fire Service dispute. In this particular episode, the employer sought the support of such groups by holding media briefings at the same time as staff were informed of restructuring proposals. By informing these groups of plans that would affect changes favourable to their interests, the employer was then able to present their support to the Union as evidence of a driving force behind the change process.

A forcing strategy is manifest in distributive bargaining tactics designed to procure as many concessions from the union, while simultaneously conceding as little as possible. In order to successfully execute a forcing strategy, the Fire Service engaged several types of tactics consistent with their distributive bargaining objectives.

Tactical Implementation of a Forcing Strategy

The most common proactive tactics used by management were associated with making demands, establishing commitment to their negotiating agenda, and manipulating the level at which the negotiations were to take place. Management's bargaining representatives established a powerful position in negotiations by putting forward astringent demands accompanied by the attitude that little compromise on those demands could be expected. The Fire Service also engaged tactics that were of a reactive nature, designed to undermine the Union's negotiating strategy and manipulate the Union's assessment of their own and management's utilities. These included media campaigns in order to propound management's position, establish credibility and to respond to the

Union's press statements and media-related tactics. After the Union issued notice of industrial action, the employer engaged in tactical activities contrived to emphasise the cost of strike action to the Union. Mostly these tactics used the mass media to influence public opinion and garner support against the Union.

The Use of Media Campaigns and Manipulation of Strike Costs

During the review process, the Fire Service had assumed a defensive position in response to the Union's media campaign against restructuring. At this stage, however, the Union had provided the impetus needed for the Service to revert to an offensive approach. By deciding to ballot members for total industrial action, the Union acceded to a retaliatory media attack denigrating firefighters' refusal to respond to emergency calls. Diverting attention from the Service's actions to those of the Union, newspapers published headlines such as "Fire chief fears deaths in strike," under which the possible consequences of strike action were emphasised. The public was informed that they would have to fend for themselves and could not rely upon the firefighters to turn up in the event of an emergency. The Fire Service launched a fire safety publicity campaign focusing on how the public should fend for themselves, and announced that the Fire Service was not liable for any damage and could not be sued in the event of an emergency. The chief executive also focused on Union leaders in his offensive against the Union, stating they were needlessly putting lives and property at risk by manipulating members to strike. By pinning the blame on Union leaders, Cummings had not only circumvented public support for firefighters but also attempted to instil an element of doubt about the strikes in the minds of firefighters. For example, when the Union served a 14-day strike notice in advance of the national ballot the Fire Service instigated a large-scale advertising campaign to give the public advice on fire safety in case of a strike. They also warned the public that they would not be able to sue the Fire Service in the event of firefighters not turning up to an emergency during a strike. Local councils prepared to declare a state of emergency if the strike went ahead, enabling them to use firefighting equipment and stations.

The Fire Service refused to announce the entirety of its strike contingency plans, alleging the Union would use them to further inhibit public protection. However, they confirmed plans to use volunteers and possibly defence staff. Volunteer firefighters, however, refused to be used as strikebreakers. The United Fire Brigades Association (UFBA), an organisation representing volunteers, signed an agreement stating volunteers

would not take over stations or appliances normally staffed by Union members. They were bound by an agreement with the Fire Service to respond to fires and other emergencies, however they would only do so outside their own districts or zones. The armed forces are the most predominant and widely used source of contingency workers in the event of a disruption to essential services. They tend to be readily available and are trained to respond to crisis situations. A further advantage of engaging defence personnel is that they are relatively removed from groups of workers and from trade unionists, and so are less likely to be affected by activities such as blacklisting or picket lines (Morris, 1986).

The Fire Service also appealed directly to firefighters to refuse to take part in the strike and claimed to be confident that some would do so. In doing so, however, the Union accused the Fire Service of intimidating employees with threats pertaining to future employment, financial inducements and emotional blackmail.

Influencing Internal Differences: Dividing Union Membership

The Union was accused of being militant and using tactics that endangered life and property. The National Commander, Kerry Everson, stated that the Service had tried to be fair “but the door to a negotiated settlement has been slammed in our face by Union leadership with this strike declaration” (Kennedy, 1994a: 1). The Fire Service argued that it made a major concession by offering to retain minimum shift staffing levels at every station and on each appliance. It accused the Union of being determined to lead members to a strike before the ballot results were even known, and that the Union appeared to be making decisions in isolation from its members. Thus, the employer buttressed its forcing strategy with attempts to undermine or instil doubt in the minds of Union members regarding the efficacy of their leaders. Such tactics are designed to impose indirect pressure on union negotiators by way of their membership. A key distributive tactic revolves around attempts to encourage dissent within the other party in order to undermine the strength of their distributive bargaining activity (Walton and McKersie, 1965). As union negotiators are accountable to their constituency, any diversity of objectives or doubts about the party’s bargaining agenda serve to complicate the task of negotiators whose job it is to represent the views of members.

Level of Negotiations

In what would become a recurring theme in the Service's negotiating tactics, meetings at this stage were impeded by the limited mandate of the employer's representatives. Negotiations often ended in adjournment as Fire Service representatives claimed a lack of authority and required further instruction or permission from the employer to respond to or proceed with union claims. This tactic is generally used as a means of frustrating the bargaining process and as an attempt to manipulate the other party to reconsider their utilities within the parameters prescribed by a limited mandate (Walton and McKersie, 1965). The Union, while frustrated with the delays and inefficiencies imposed upon negotiations, was more committed to their position than they were willing to concede in the hope of an easier means of settling a contract. However, the Union exploited this issue to a certain degree, by utilising the opportunity to create differences and perhaps instil doubt within the management team. For example, Union representatives reported telling the employer's representatives to return to the bargaining table when they had actually had the ability to negotiate with the union. That is, until they had the authority and mandate to respond to the Union's claims rather than merely present the employer's demands. Fire Service bargaining agents were disparagingly referred to as management's "puppets."

In addition to taking advantage of using lower-level representatives, the employer also threatened the established bargaining structure by manipulating the level at which negotiations would take place. As negotiations floundered the Fire Service forewarned the Union of their intentions to approach employees directly with a contract offer. This presented the Union with an explicit demonstration of management's bargaining power, designed either to force concessions from the Union out of a desperation to maintain their function in negotiations, or to achieve the desired contract terms by eliciting the agreement of employees. Consequently, every member was sent a proposed contract, asking that they sign it individually and return a form agreeing to the new contract. In April both parties sought Employment Court injunctions. The Union did so in an attempt to stop the Fire Service bypassing it as bargaining representative by offering firefighters a collective contract individually. The Fire Service sought an injunction to stop the forthcoming strike on the grounds that 14 days notice had not been given as required by law for their industry. The strike was cancelled on order of the Employment Court, where the Commission argued that, as an essential service, they had not received sufficient notice of industrial action. The Judge restrained the Union from instigating, inciting, encouraging

or abetting strike action, and expressed hope that the orders would give the parties time to return to negotiations so the public would not have to suffer the consequences of an industrial dispute. The Union's application for an injunction was dismissed after the Fire Service assured it would not try to negotiate or communicate directly with firefighters while the Union was their bargaining agent.

The "Final Offer"

When negotiations resumed, the Fire Service countered Union claims with a 'package' offer to settle the contract: a 2 per cent increase in exchange for increased routine hours; a 12 month term; a clause requiring recognition of the review and for the necessary negotiations to take place at 28 days notice; a guarantee of staff numbers (at a level below existing figures). This was stated as a final offer, whereby after Union negotiators rejected the package Fire Service representatives walked out, advising that negotiations were adjourned indefinitely. Management expressed disappointment that the Union had failed to respond to what it considered to be major concessions. The Service withdrew completely from further negotiations, stating it had gone as far as it could to accommodate the Union's concerns, but that it wanted negotiations to take place in the next 12 months to implement restructuring plans. "In today's climate, few employers can guarantee existing conditions, which are very generous. We must reflect the changes that have occurred in other sectors" (Kennedy, 1994b: 9). The Union decided to hold a ballot of members regarding the final offer. Not only did an overwhelming majority reject the package, but members also passed a vote of no confidence in the chief executive, the national fire commander, senior staff and headquarters, and they continued to consider taking limited industrial action.

5.2.4 Union Agenda and Strategy

The Union's key objectives were to improve the working terms and conditions of firefighters as much as possible while preserving job security. They also advocated health and safety issues, both for firefighters and the public receiving their services. While these objectives would be best addressed through resistance to the managerial agenda as the *status quo* provided a preferred alternative, the Union promoted their position that the Service did in fact need to undergo fundamental restructuring or organisational change. However, the Union disagreed with the nature of the current Review recommendations. A

notice to members stated that the union movement was accused of intransigence too often and was criticised for clinging to the status quo at all costs. As Derek Best pointed out in an April notice to members, the previous year the Union prepared and distributed a document that offered cost savings and efficiencies, “while making serious workable proposals on the funding front.” Thus, it could be postulated that the Union was not entirely resistant to change as unions are often characterised as and criticised for. In this case, the Union was resistant to the specific form and methods of change occurring within the Fire Service. They were willing to utilise the strong union organisation and bargaining power inherent in such unity by making a stand against what they perceive as inefficient and inappropriate methods of management and organisation restructuring.

The Union’s bargaining power was sustained to a certain extent by the Employment Contracts Act. The nature of this legislation means that if negotiations reach an impasse, the *status quo* remains in force. Thus, the employer could not force the Union to make concessions during negotiations meetings. This did not preclude management from employing tactics to elicit concessions from management, but it did facilitate the ability of the Union to resist such ploys. The strength of the Union’s bargaining power also derived from the extent of membership, whereby approximately 99 per cent of firefighters, according to the Union president’s estimate, were members. When such a high percentage of the workforce belongs to the Union it acts as a deterrent to members acting against the objectives of the Union. For example, if a firefighter decided to accept an offer of an individual contract, he or she would then likely be “blacklisted” by the Union and ostracised by colleagues.

These social processes serve to legitimise the Union’s objectives and minimise the overt manifestation of dissension. This aspect of trade unions has traditionally been criticised by employers, who have believed that displays of intransigence may correlate to the convictions of union officials rather than their membership. Thus, it has been argued that union officials have become increasingly remote from their members, assuming more of a professional role (Gahan and Bell, 1999). However, on closer analysis of the Firefighters’ Union, it appears to have a cohesive membership and a highly accountable executive committee. Its committee members are all elected firefighters except for the secretary, Derek Best, who is a full-time non-operational Union official elected by the full membership. Derek Best has retained the position of secretary throughout the dispute, facilitating consistency of negotiating strategies and processes. The ongoing appointment

of Best also served to build a relationship with the media; where Best has become something of a figurehead for the Union.

The Use of Media Campaigns

A key Union approach developed around a strategy of informing the public of their point of view and eliciting community support. This served to influence the balance of bargaining power and worked as a means of establishing credibility and commitment to their bargaining position. It can be argued that public support is more crucial in public sector industrial disputes due to the characteristics of government as employer and as elected representatives of the public, where they are expected to act in the interests of the country. This is particularly relevant in essential services, of which the Fire Service is one. To this end, in a notice to members in March, the Union stated that “locals are encouraged to find ways to bring the message of the unfairness and inadequacy of the employer’s proposal directly to the public.”

Not only do firefighters require public support, they also need to justify their course of action in threatening and preparing for strike action. While partial industrial action does not have as much of an impact on the public, when this course of action was later dropped in favour of a total strike providing justification became extremely important. Firefighters refusing to perform their jobs threaten both lives and property if emergencies occur during industrial action. Unlike manufacturing firms, for example, the provision of the service cannot be stopped. A workforce is required to put out fires, attend motor accidents and chemical spills, and generally protect the public in such emergencies. The Union realised that this situation provided perfect ammunition for the Fire Service to denigrate the Union’s actions and thus incite public support for their position and sway opinion against the Firefighters’ Union. While management acknowledged the public’s high regard for firefighters, industrial action has fallen in public opinion over the last few decades and the Fire Service is likely to utilise the situation to gain as much support as they can, or to at least instil doubt about the Union’s actions. In this case, the dispute conforms to international trends, whereby unions have realised that industrial action has become of limited use as a form of gaining economic leverage. Instead, unions have been forced to identify non-traditional forms of leverage to augment industrial action (Walton et al., 1994).

Strike action

This is the only episode for the duration of the dispute where the Union initiated preparations to carry out their threat of total strike action beyond the formalities of a ballot of members. A strike has often been considered the collective equivalent to an individual employee's refusal to work unless the employer improves the offer of compensation. However, the underlying assumption of the strike is not that the employees will seek employment elsewhere if an improved offer is not forthcoming, but that eventually the employer will be compelled to reinstate them. If the employer is able to hire a replacement workforce, the strike is a redundant and futile tactic. Thus, a strike is a temporary refusal to work under the concomitant terms and conditions, but without the expectation of terminating the employment relationship (Flanders, 1970). It has been argued that public sector unions are able to exploit their ability to withhold labour in order to apply political pressure on the employer. This is based on the notion that strikes in the public sector tend to be more inconvenient than in the private sector and so the public will press the employer to negotiate a strike settlement. As such, public unions are considered by some to threaten the processes of democracy (Cohen, 1988). However, others have argued that the strike is no longer an effective means of gaining concessions from an employer regardless of the sector or political processes involved in the dispute (Walton et al., 1994).

The nature of the Fire Service as an essential service carries legal implications for the organisation of any industrial action. On the part of employees or their organisation, the most important requirement is that at least 14 days notice be given in the event of any industrial action. The Firefighters' Union had previously withdrawn notice of partial industrial action on the basis that the requirements of employment legislation make it easier to organise a total strike rather than a partial one. This is most likely due to the requirements for informing the employer of the nature of the strike action. Notices of Strike Action need to state exactly what the action will involve, a complete list of all employees participating, when strike action will commence and conclude, and where it will take place. Thus, it is easier to state exactly the nature of total industrial action rather than partial action, particularly where the employer may seek to find discrepancies in the Notices of Strike Action for partial strikes to penalise the Union for initiating such action. Any modification to strike plans requires another strike notice and a further 14 days notice, explicitly stating the change of action. If a strike notice is later found to be

incorrect in any of the above exigencies, anyone who participates in the action may be subject to tort action in the event of damage resulting from the industrial action.

Morris (1986) noted that unions have traditionally limited the impact on public health and safety of industrial action in the essential services by limiting the nature of the action. This also serves to maintain public support for the union while also emphasising the essential nature of the service its members provide. The Union informed the employer it would cancel the strike if the Service were prepared to maintain existing staff levels in the next contract before any restructuring plans are negotiated, explicitly demonstrating the power inherent in strike action. The Fire Service had given this assurance in earlier negotiations but did not want it included in the contract. However, the Union, who refused to accept the Service's guarantee without a contractual clause to support it, branded the offer as "grace and favour" tactics.

After the employer's injunction precluded the initial strike, the Union submitted a draft notice of further strike action to the Fire Service for their consideration. After having to cancel industrial action twice previously on technical grounds, they asked the Fire Service to review the notice to determine if it was in anyway unclear or deficient. The Fire Service castigated the Union's actions as ridiculous. They then attempted to overcome the strike threats and the Union's misrepresentation of information in the media by advertising their package offer as "A Fair Deal for Firefighters" in four metropolitan newspapers. This served to reinforce the value of garnering public support and utilising the media to forward one's own position.

5.2.5 Implications of the Initial Negotiating Strategy

The review was completed by the end of October, heralding 340 frontline job losses, 120 managerial and support staff losses, with cuts to be made through staff taking "enhanced" early retirement packages. A new 9-day roster was proposed, incorporating a 56-hour week with firefighters working three 24-hour shifts with days off between each shift and four days off after every third shift. This was accompanied by pay rises ranging from 9 to 24 per cent, with most firefighters better off by 14 per cent due to increased superannuation, medical and insurance provisions. The proposals and their lack of common ground with Union claims stunned the Union. They feared the changes would lead to increased public safety risks, however, the Fire Service stated it wanted negotiations to begin next month in order for the contract to be in force by the end of March. The Fire Service acknowledged the lack of public demand for cuts to the Service,

but it defended the right of lobby groups, such as the NZBRT, to express their concerns about efficiency. It was reported that the Government had little to gain from the cuts, and only implemented the review under pressure from various lobby groups. The restructuring plans were to go ahead, despite objection from firefighters, the public, and various political parties. Firefighters protested over their new work conditions, appealing to the Fire Service to let them help find alternative ways of achieving cost savings.

In correspondence, both parties stated that they had always hoped that the dispute could be resolved without resorting to strike action, and that they each wished to resume contract talks. However, the Union placed a number of conditions on the resumption of negotiations. They claimed that a major difficulty they felt faced successful negotiations was the employer's explicit position that to do anything more than agree to a simple rollover contract with a future offer of a small payrise conflicted with the review process and that no changes could be considered until the outcomes of that process were known. According to the Union, that made further negotiations redundant, as they felt no progress could be made in light of the employer's position. The Union also considered further negotiations to be futile unless they could negotiate directly with the chief executive, given the restrictions placed on the employer's bargaining representatives and their lack of authority to make decisions during negotiations. However, when the chief executive, Maurie Cummings, wrote to the Union requesting for negotiations to resume, the Union responded positively, while still maintaining that the current process and circumstances made such efforts futile if the employer repeats the position that nothing would change until after the Review.

5.3 Bypassing of the Authorised Bargaining Agent: *Ivamy v NZ Fire Service Commission* [1995] 1 ERNZ 724

The level at which negotiations are held has been mentioned numerous times during the Fire Service industrial dispute. While from the union perspective this issue was normally voiced within the context of asking for negotiations to take place at the highest possible level within the Fire Service, the employer exhibited a desire for negotiations to take place at the individual rather than institutional level. On numerous occasions the Service appeared frustrated by the Union's refusal to negotiate restructuring issues, to the extent that attempts were made to communicate directly with individual employees. This is illegal under the ECA (1991) as it constitutes bypassing an authorised bargaining agent.

This is one of the few allowances made to protect the rights of unions when bargaining collectively on behalf of members. During negotiations employers are expected to communicate and negotiate solely with bargaining representatives if they have the authorisation of employees.

The events analysed within this section took place within a complex context where several different processes and forces were impacting upon the employment relationship simultaneously. For example, the Union was planning and implementing their campaign to hold a citizens initiated referendum, which was accompanied by political activity and lobbying from both parties. Furthermore, while the events and subsequent legal proceedings that will be analysed in this section were occurring, the parties continued to meet to discuss and negotiate agenda issues. For the purposes of analysis, the *Ivamy* case in which the Union filed legal proceedings against the employer and the referendum process have been distinguished and thus are not detailed in strict chronological order.

The Incident

Negotiations were due to commence on February 23, 1995 at 10.00am, where the employer was expected to respond to the Union's previous claims and put forward a further proposal for settlement. As early as 6.00am staff received information packages distributed by the employer outlining the latest contract offer and detailing their rationale for restructuring. The Fire Service later argued that the early distribution of the packages was a result of communication problems with couriers, with the packages scheduled for delivery after negotiations with the Union had commenced. The information package provided the employer's justification for restructuring, including the proposal to implement a 56-hour roster. It also offered a one-off \$4000 incentive payment to firefighters if the contract was signed by March 31, 1995. Furthermore, the concept of the community firefighter model (later to become Community Safety Teams, or CSTs) was introduced for the first time.

Justification for Restructuring: Fire Service Objectives

The package distributed to firefighters first summarises current employment terms and conditions, stating that firefighters actively work for 17 hours a week, with 10 hours set aside each night shift for paid on-call rest and sleep. For this the average permanent firefighter was paid \$44,000 per annum. The report then explained how changes in the

country's economy have required that service-providers examine their performance, in both the private and public sectors. At the basis of reforms to occur in the Fire Service were three review documents, the chief executive's Review of 1994, the Independent Review conducted by M. McCaw, R. Miller and J. Auton in 1993, and the 1993 Ministerial Review by the Minister of Internal Affairs (at the time, the Honourable Graeme Lee). It was emphasised that while firefighters' terms and conditions of employment have assumed a higher public profile, it is only one area designated for restructuring. Other reforms included improving management, clear definition of the Service's role, and increased emphasis on fire prevention and education. To this end, the Service wished to implement a 56-hour roster to improve the efficiency of money spent on wages and related expenses. The Union was provided with several roster variations, one of which comprised a 40-hour roster option while the remaining provided different 56-hour options. The information packages also included reference to the additional benefits available to firefighters and introduced the community firefighter model. Appendix 4 provides further details of the content of management's information packages.

The Union's Response

The Union learnt of the packages when several firefighters contacted Union officials to lodge complaints. Negotiations were postponed as the Union accused the Service of breaching an earlier agreement not to try to communicate directly with employees about negotiations. The Union's lawyer notified the Service's lawyer of a pending lodgement of injunction proceedings at 9.30am as the Union sought an urgent injunction to restrain the employer from committing such actions. At 3.00pm the Union was notified that chief employment Judge Hon. T. Goddard would hear the Union's case as soon as a court was available. The proceedings commenced just before 5.00pm and by 10.00pm the case had been heard and an oral decision was given. The application for an injunction was refused on the basis that the employer subsequently made an undertaking not to distribute information relating to conditions of employment to employees who are Union members before March 10, 1995 when substantive hearings would take place. Furthermore, the court ordered the Fire Service to retrieve the information packages and to refrain from delivering more. The Union reported that it would have preferred an injunction to legally restrain the employer from delivering packages, but it was not unhappy with the decision.

The incident did, however, have a severe impact on the status of negotiations and the relationship between the two parties. The Union accused the Fire Service of being dishonest and distrustful, while the Union just wanted to ensure contract negotiations were conducted in good faith. Union officials concluded that they had learned their lesson not to trust the Service to bargain in good faith, as they will use deceit and subterfuge to further their own agenda. It was also claimed that the Service's true intentions were becoming apparent, where the Union interpreted the latest proposals would result in massive reductions in the number of professional firefighters despite the employer's claim that there would be no reduction in service to the public. However, this announcement was in accordance with the Union's opinion that there was a positive correlation between firefighter numbers and service levels, a relationship the employer disputed.

5.3.1 Fire Service Strategy and Tactics

The Fire Service defended its actions, stating that they had not intended to undermine the Union's role as bargaining agent, but wanted to ensure that employees were fully and correctly informed on matters ranging from specific negotiations to wider restructuring issues. In an effort to disseminate their position, the Service's national commander, Kerry Everson, spoke on national radio about the latest contract proposals and the Service's direction for the future. The Service also attacked the Union's claims that the public would be put at risk if the changes currently being negotiated were implemented. In a media statement, Vic Hewson, general manager of human resources, described the Union's comments as "self-serving alarmist public deception."

There is no way we would be seeking to introduce changes which would place life at risk. The Fire Service has as its mission to protect life and property from fire and other dangers. That hasn't changed...We would prefer to see the Union stop wasting time trying to alarm the public and get back to the negotiating table so we can discuss the real issues.

Regional operational management had assured senior management that they could maintain the standards of cover for their areas using a 56-hour roster and fewer firefighters. Hewson also stated that "the 56-hour shift arrangement means we can do the same job with less [sic] firefighters."

It can be inferred that the employer was sounding out employee attitudes at individual brigades. Most employees were not directly involved in the negotiation process as it takes place at a high level of centralisation within the Fire Service. As such, many

firefighters could have been feeling frustrated and anxious at the lack of progress after more than a year of negotiations since the collective employment contract expired and several years' experience of a wage freeze.

The Service reiterated that the \$4000 payment was an incentive to have the contract signed by March 31, a date that would allow the implementation of a 56-hour roster by July 1. The offer was contingent upon achieving the savings afforded by that implementation date and thus the employer could not sustain the offer if the deadline was not met. In doing so, the employer introduced time constraints and pressures that had largely been absent from negotiations until this stage. While the expiry of the collective employment contract could be construed as a deadline placing time pressure upon negotiations, the parties did not appear overly concerned at missing that deadline. This may have been due to the ECA clause that automatically transfers employees onto individual contracts with the same terms and conditions as the collective, thus preserving the status quo until the impasse was overcome. By offering a monetary incentive with a deadline for its acceptance, the employer increased the pressure on Union representatives. This tactic may also have been an overt attempt to highlight divisions among Union members, particularly between constituents and Union officials. However, Stuhlmacher, Gillespie and Champagne (1998) found that while one might expect time pressures associated with incentives to lead to concessions, when this occurred within a competitive rather than a cooperative environment, it often provoked increased competitive behaviour. The Union queried why, if the contract proposal was pronounced to be an excellent offer, did the employer have to offer sums of money to firefighters to ratify it.

While contract negotiations had been postponed following the Union's application for an injunction against the Fire Service, the employer sought to continue consultation with the Union in order to progress restructuring. Management made several suggestions in order to overcome the Union's complaints that the consultation process was a farce, with little attention given to the Union's concerns. In a letter to the Union, Geoff Summers, Director of Personnel, offered to delete the requirement that the Union abide by the decision of the Fire Service following the consultation process, but states that this process needed to be completed by April 30, 1995. Summers also suggested that the parties retain the services of a mediator to assist the consultation process, and once finished, the Service would implement the proposals, which would be subject to any changes or modifications resulting from consultation with the Union. However, the Union later rejected the suggestion of mediation, instead choosing to pursue lack of consultation

issues through the Employment Tribunal. However, despite these and other initiatives, the parties still remained at odds with vastly different bargaining positions.

Contempt of Court Allegations

Towards the end of June 1995, the Union sought legal advice after it discovered that firefighters had been approached individually by Fire Service management. These approaches detailed suggestions of seeking single station employment contracts and either promoted a different shift system or provided in-depth information on alternative shift systems before these were even proposed in formal negotiations meetings between bargaining representatives. As these topics relate directly to firefighters' terms and conditions of employment and to issues being negotiated at the time, this action was considered to constitute a breach of the employment contract. More importantly, however, management's actions also constituted a breach of the employer's undertaking made in February 1995, that it would not communicate with its employees about negotiations matters and in doing so, bypass the Union as authorised bargaining representative. Specifically, the employer undertook not to partake in such actions pending the outcome of the previous court case on this matter. Consequently, the Union acted to challenge Fire Service management over their conduct, in the form of a "Contempt of Court" allegation.

The Union's hearing regarding the employer's "contempt of court" allegation was heard in the Employment Court on June 26, 1995. In presenting their case, the Union argued that the Fire Service had contravened earlier court orders and an undertaking made in a previous court hearing. The purported breaches of the undertaking pertained to information provided to staff by District Chief Fire Officers about issues which, the Union alleged, were the substance of employment contract negotiations. The undertaking made in February was as follows:

That the [Fire Service Commission] will not directly address further information about the contract negotiations to the members of the Plaintiff Union prior to 10 March 1995 or the earlier disposal of these proceedings.

The Chief Judge of the Employment Court observed that the instructions given to District Chief Fire Officers did not sufficiently explain the terms of the undertaking. Thus, the Commission's counsel advised the Court that it would disseminate the exact terms and outline the consequences associated with the undertaking. However, in offering to do so, the Commission reserved its right to release such information to the media.

Previous approaches to firefighters by the Service were designed to ensure that employees were receiving all available and correct information as it had to pass through the Union as gatekeeper when following channels designated by the employment contract. This latest approach, however, introduces the issue of level of negotiations and the degree of centralisation in the bargaining structure.

5.3.2 Ivamy v NZ Fire Service Commission [1995] 1 ERNZ 724

On 14 July 1995, the Union's application for an injunction against the Fire Service was heard in the Employment Court. Upon reading the filed affidavits and hearing evidence presented by both the Union (plaintiff) and the Fire Service (defendant), the Chief Judge ruled:

That an injunction do issue restraining the defendants, its officers, employees, or agents from negotiating or attempting to negotiate directly with the first, second, and third plaintiffs, or any other employee of the defendant for whom the fourth plaintiff is an authorised bargaining agent, whether by letter, circular, or by otherwise approaching any of them.

The Chief Judge stated "it is clear to me that it was the defendant's plan by means adopted to belittle the Union, to reduce its importance and standing in the eyes of its members and to prejudice its ability to represent them or do so effectively." The court also commented that it appeared the Service had deliberately tried to create the illusion that it was not bypassing the Union by providing it with some of the materials contained within the information packages before they were distributed. However, when the Union was provided a package later on the same day as employees received them, the information was incomplete or differed from that provided to employees.

The misdemeanour was compounded by a number of factors, including the Service's previous breach of an undertaking made when the injunction application first went before the court in February 1995. District Chief Fire Officers were accused of contempt of court by the Union when they approached firefighters individually in June to enquire about the possibility of brigade-based employment contracts, among other issues. Furthermore, in June 1994 the Fire Service commission and the Union reached an out-of-court settlement in which the Service agreed it would not attempt to negotiate employment terms and conditions directly with employees. While this agreement did allow the employer to report in general form the progress of contract negotiations, it was determined that the Union would be provided with any distributed information at the same time as

employees received it. The Service would have adhered to this agreement, if not their previous undertaking, had their plans for distributing the information not gone wrong. Miscommunications with the couriers resulted in the packages, being delivered several hours earlier than expected. As this prevented the Service from delivering the same information to the Union at the same time, the Fire Service was open to accusations of attempting to bypass the Union. As the proposal contained a \$4000 incentive payment if a collective employment contract was signed by March 31, approximately six weeks later, this made the employer's actions increasingly questionable.

The Chief Judge concluded that it was possible that the court should not have accepted the Service's initial undertaking framed in the way it was and that instead an injunction should have been issued. It was also observed that "the moral may be that the Court should be more sparing, even parsimonious, in its acceptance of undertakings from defendants – at any rate, defendants who have shown themselves ready to be astute, to find loopholes in undertakings they have themselves offered."

Implications of the Ruling

Due to the nonprescriptive nature of the Employment Contracts Act, many of the cases going before the Employment Court were open to the interpretation of the presiding judges. The case brought against the Fire Service by the Union was one such case requiring the interpretation of the Chief Judge, and thus had wider implications for the practice of collective bargaining. Through its ruling, the Court clarified and even narrowed possible interpretation of the law. As the Employment Contracts Act states that negotiations issues must be discussed only with an authorised bargaining representative, the Court felt it necessary to define the term 'negotiations' in making its ruling.

In this context, negotiating does not have any technical or special meaning. It does not signify merely the formal process of offer and acceptance or the advocacy of offer and counter offer. It is wide enough to include all communications, oral or written, formal or informal, from one side to the other, during employment contract negotiations, intended to induce the other side to see or accept the first side's point of view. It can include staff meetings, "pep" talks, "briefings", as well as letters, memoranda and items in internal magazines.

The Fire Service asserted that they believed they had acted within the law by sending information brochures directly to their staff as they were intended to be received by Union officials before employees. However, the court decreed that the only information that could be communicated to staff once negotiations with their authorised

representative had commenced were those authorised or require by the Employment Contracts Act, such as notices of lockout or advising of suspension of striking employees. The judge ruled that once employees' bargaining representative had been granted authority, an employer must communicate and negotiate issues pertaining to their employment through that bargaining representative only.

The Union proclaimed it was also a significant ruling for others involved in employment talks. The Judge noted that the Fire Service "did not necessarily wish the Union harm, but it wanted to neutralise the Union's influence with its members. ...It was prepared to do whatever it could get away with under the law to achieve this objective. It deserves censure only if it broke the law, for otherwise it was merely seeking to advance its own commercial interests, necessarily (as it has no business competitors) at the expense of its employees." The Union stated that they were always ready to enter into genuine negotiations with the Fire Service, but that this particular strategy had seriously impacted upon the degree of trust between the parties that is required for constructive negotiations. "This decision exposes the commission's industrial relations strategy for what it is. It is now clear they will eventually have to sit down and deal with the Union and see what's possible to achieve rather than just presenting a wishlist that's never going to happen" (Independent, 1995: 20). On succeeding with their application for an injunction, the Union sought legal costs and pecuniary and general damages from the employer as the court ruled it was entitled to do. However, the pursuit of these costs was put in abeyance not long after the court hearing, pending the Fire Service's appeal of the ruling.

5.3.3 The Fire Service Commission Appeal

Soon afterwards, the Fire Service appealed the Employment Court's decision that it could not communicate directly with employees regarding employment contract matters. The Employers' Federation supported the Service's case, stating that it felt the ruling severed the "fundamental relationship between employers and employees" (Rotherham, 1995: 20). According to chief executive, Maurie Cummings, if the appeal failed the Fire Service would "have to revise our industrial relations strategy, but it was our contention the members weren't getting all the information from the Union and we were just filling that void" (Rotherham, 1995: 20).

The Fire Service took issue with Chief Judge Goddard's interpretation of what constitutes 'negotiations,' as it is intended in the Employment Contracts Act. The Act

allows employers the right of freedom of contract, including the right to negotiate contracts with employees. However, where employees have authorised a bargaining representative, negotiations must take place through this channel of communication. The question at hand related to whether information disseminated by the employer to employees explaining the employer's perspective or position equates to negotiations.

The Court's ruling also placed restrictions upon the Service's ability to relay information to the media. Judge Goddard cited that the Privacy Act (1993) precluded the release of personal information about the state or content of employment negotiations and contracts from being made public unless it was done so with the authorisation of the individual employee. The Fire Service argued that it was inequitable that the Union was allowed to relay information regarding contract negotiations to the media and the public, while the Service was forbidden from doing so. However, the court's response to this contention stated "there is no force in the complaint that it is somehow unfair that the Union can make statements about the negotiations but the employer cannot. The answer, of course, is that the Union may have the employee's consent to the disclosure, while the employer does not" (Rotherham, 1995: 20). However, chief executive of the Employers' Federation, Steve Marshall, later argued that on many occasions matters of employment contract negotiations are of interest to the public and should be debated in the media. It can be argued that this is particularly relevant to public sector industrial relations, with the dispute between the Fire Service and the Firefighters' Union being covered quite comprehensively in the media. With the advent of the firefighters' referendum, it would have seemed especially important that the perspectives of both sides were equally promulgated to those who would be voting.

Thus, the Fire Service Commission sought an urgent Court of Appeal review of the Chief Judge's decision. The Commission's appeal was predicated on a claim that the ruling breached the Privacy Act. While the Employment Court ruled that *because* of the Privacy Act the Service was prevented from releasing contract negotiations information to the media, the Service argued that because the ruling meant unions or bargaining agents could speak to the media but employers could not, this breached the Privacy Act.

The Employer's Federation applied to be party to the appeal, which was opposed by the Council of Trade Unions who advised the court that if the Federation were granted party status then they too would seek this position. The Federation stated that the appeal was viewed as a test case and therefore had wider implications for the business community. According to the Federation's chief executive, Steve Marshall,

“communication at all levels of a company is very important and is fundamental to developing employer and employee relationships” (Dominion, 1995a: 4). However, Ross Wilson, vice president of the Council of Trade Unions, stated that the Employment Court’s ruling merely enforced a fundamental right given to employees in the Employment Contracts Act.

The Commission and the Employers’ Federation that the ruling breached the Bill of Rights Act also argued it. Specifically, it was maintained that it infringed a provision allowing freedom of expression. The Judge’s decision effectively ruled that an employee’s right to authorise an agent takes precedence over the employer’s right to freedom of expression. “It is tying the hands of employers...it affects the balance of bargaining” (New Zealand Herald, 1995a: 13). Thus, it was argued that the ruling breached the Bill of Rights Act by enforcing a blanket ban on all employer communications with staff or media during negotiations and ensuring that all communications had to be channelled through the bargaining agent. The parties to the appeal also contended that the Employment Court issued a definition of ‘negotiations’ that was too broad. According to the Court’s definition, any communication pertaining to employment contracts was considered to relate to negotiations.

NZ Fire Service Commission v Ivamy [1996] 1 ERNZ 85 (CA)

By majority decision, the Court of Appeal ruled that the Union’s previously successful application for an injunction preventing the employer from communicating directly with its members would be overturned. The application was deemed overturned on a number of points.

Bypassing an Authorised Agent

According to the Court of Appeal ruling:

Section 12(2) is predicated on the basis that negotiations for an employment contract are under way between the employer and the employees’ authorised representative. Negotiations are a process of mutual discussion and bargaining, involving putting forward and debating proposal and counter-proposal, persisting, conceding, persuading, threatening, all with the objective of reaching what will probably be a compromise that the parties are able to accept and live with. Once that process is under way with an authorised representative participating, the process may not be conducted directly with any party so represented. The provision of factual information does not impinge on that process, but anything that is intended or in calculated to persuade or to threaten the consequences of not yielding does. Whether any words or actions are of that kind is a question of fact to be determined on an overall view of what was said or done and the context in which it was said or done.

It was stated that rarely would an employer provide information to employees during negotiations if not to persuade, however, it was considered whether the factual information provided in this case was intended to persuade the employees to exclude their representative and enter into contract negotiations directly with their employer, in effect, intending to bypass the authorised bargaining agent. The Court of Appeal determined that “if it is persuasion as to the reasonableness of an employer’s stance on a particular issue which all parties understand is the subject of negotiations between representatives it need not amount to a failure to recognise an authority so as to contravene s 12(2).”

In addition to attempts to persuade employees to remove the authority of their bargaining representative and negotiate directly with the employer, the bypassing of an authorised agent may also include unjustified or misleading denigration of their representative to employees. However, in each case the facts must be taken into account, with allowances made for the traditional robustness inherent in contract negotiations. Thus, it was required that the overall context and history of negotiations and the employment relationship be taken into account. It was deemed unproductive to isolate attention to a particular document or paragraph. The Court of Appeal took into account the prior agreement between the parties that allowed the Service to report in general form the progress of contract negotiations, provided the Union received any information at the same time as employees.

The documents were to speak for themselves, rather than have their meaning determined by evidence from employees and the employer regarding their interpretations of the intent of the documents. Thus, where Union members may have perceived the incident as an underhand employer tactic to undermine the status of the Union, the Court of Appeal viewed the documents as providing factual information as per an agreement made between the parties. It was also noted that the Union did not receive the information as soon as it should have under the contract. The Employment Court ruling included the interpretation that the employer’s moves to provide the media and stakeholders with the information package was a means of camouflaging the underlying intent to bypass the bargaining agent. However, in taking the history and context of the parties’ relationship into account, the Court of Appeal noted several relevant issues. The court noted that restructuring of the Fire Service and contract negotiations had been the subject of a round of meetings held with various local branches of the Union, during which substantial direct discussion had taken place between employees and Commission representatives. It was also observed that there had been a number of allegations on the behalf of the Union

against the employer for attempting to bypass the Union, which resulted in the 1994 agreement regarding distribution of information to employees. The Court indicated that the Union had pursued a \$5000 per firefighter payment to account for stress associated with restructuring, of which it had informed its members. Media debate and public interest in the reform of the Fire Service and its impact on employment negotiations was also taken into consideration, including to the extent that the Union had initiated referendum proceedings. That the Commission had been aware of the intent of language used by the Union in communications with its members to criticise restructuring and employment contract proposals was also deemed relevant. Finally, in issuing its decision regarding the intent of the employer's actions, the Court of Appeal considered previous criticism from the Union that employees had learnt of new restructuring proposals via news media rather than directly from their employer or bargaining agent.¹ Thus, it was decided that the Service's documents could be interpreted as factual statements of the employer's position rather than as pertaining to direct negotiations regarding employment terms and conditions.

The conduct of the Commission (though perhaps ill-judged and, as it emerged, counterproductive) was not inconsistent with the obligation to recognise the authority of the bargaining agent. It was abundantly clear that it was contemplated that the bargaining would be with the authorised negotiators. There should not be read into the documents the element of subtle influence of employees having the effect of negotiation.

Definition of Negotiations

The Employment Court's definition of negotiations was dispatched, whereby the Court of Appeal deemed that "negotiations include the bargaining process rather than all communications on the subject of the negotiations."

Freedom of Association v Freedom of Expression

It was remarked that, in light of the Bill of Rights Act 1990, s 14, communications regarding subjects that may be of general public interest could not properly be found to breach s 12(2) of the Employment Contracts Act.

The Views of Dissenting Judges

Judge J.J. Thomas expressed concern that the documents were allowed to speak for themselves in order for the Court of Appeal to form its own opinion. It was argued that courts undertaking an appellate or review function should acknowledge the expertise and

specialist knowledge of the Employment Court, which is, inherent in its function. The dissenting Judges were of the opinion that the Employment Court had established an interpretation of the meaning and impact of the information packages and that the Court of Appeal should not espouse a different view “unless the Employment court’s view is one which it was not reasonably open to that Court to hold.” It was also argued that to decide in favour of the Fire Service Commission would result in the perception by both employers and employees that the import of s 12(2) was lessened, thus undermining the collective bargaining process. In overturning the injunction application, the ruling was seen to allow employers to pursue strategies discordant with “both the letter and the spirit of s 12(2).” Consequently, the appeal was allowed and the injunction discharged. Costs of \$5000 plus disbursements were awarded against the respondents (Union) and costs in the Employment Court were to be fixed in light of the Court of Appeal judgement.

The Wider Implications of the Fire Service Commission’s Appeal

According to one of the judges presiding in the Court of Appeal case, Judge J. Gault, “the intensity of the industrial dispute out of which this case arises suggests that the litigation reflects rather more tactics than concern for fine points of the law as it relates to employment contract negotiations.” However, two of the five judges presiding over the appeal issued dissenting decisions, enumerated in rather strong terms. Lord Cooke, President of the Court of Appeal, and Thomas J, issued those decisions. In presenting his decision, Thomas J objected to the Court exceeding its jurisdiction to make findings of fact rather than basing its ruling on points of law alone. He then listed numerous rights that, in his opinion, would be open to employers as a result of the Court’s decision to overturn the injunction. Accordingly, employers, including the Fire Service, could engage in behaviour such as communicating directly with employees to further a strategy that could disadvantage the bargaining agent in negotiations. An employer may also distribute information that is not strictly factual and may persuade, or be intended to persuade, employees as to the reasonableness of the employer’s contract proposal. This means of persuasion could indirectly influence employees’ perception of the unreasonableness of the bargaining agent’s stance on negotiations. According to this ruling, to persuade employees to exclude the Union and negotiate directly with the employer is unlawful, but to persuade employees that the employer’s stance is reasonable “need not amount to failure to recognise.” However, of particular consequence is that the result of *Ivamy*

indicated that an employer may avoid the consequences of pursuing a particular strategy that, if it does not go according to plan, contravenes s 12(2) of the Employment Contracts Act, providing the employer did not intend the strategy to misfire or result in those consequences.

It has been observed that the Court of Appeal gave primacy to an employer's freedom of expression, relegating employees' bargaining rights to a subordinate position. This was achieved through the requirement that the interpretation of s 12(2) must be consistent with the clauses regarding rights and freedom in the Bill of Rights Act. Thus, it has been concluded that employers have been granted greater freedom to intervene in the relationship between a union and its members, while knowing it is unlikely to be found in breach of existing employment law. Correspondingly, unions would expect to find it increasingly difficult to prove a breach of s 12(2). It has been inferred from *Ivamy* that the Court of Appeal does not subscribe to the concept of a union as a representative of employees, but as an independent party to a dispute or contract negotiation. As such, future collective bargaining strategies may be likened to battles between employers and unions for the allegiance of employees.

5.3.4 Implications for Fire Service Negotiating Strategies

After the original Employment Court hearing, the Fire Service submitted a new contract proposal, including concessions regarding roster issues. The Union perceived the employer's more conciliatory approach to be the result of the Court's denigration of the Service's approach to negotiations. However, after the injunction was overturned in the Court of Appeal the Fire Service renewed its attempts to achieve the changes to the employment contract considered necessary to improve the efficiency of the Fire Service. While the parties were involved in these lengthy legal proceedings, the union's initiation of a referendum was developing concurrently.

5.4 The Citizens Initiated Referendum

5.4.1 Initiation of the Referendum Campaign

The employer's forcing strategy appeared to have made an impact as the Union desperately sought a means of preventing further staff cuts. The possibility of pursuing a citizens initiated referendum was first conceived in July 1994 when the Union executive met over drinks at a bar after a negotiation meeting. As reported in a notice to members on July 25, there was a positive response to the idea and while the costs would be substantial, they saw a need to fight to save the Service. The Union also warned members that to succeed in initiating a referendum would require substantial financial input from members. A citizens initiated referendum required the collection of signatures on petitions totalling at least 10 per cent of the electoral roll. When firefighters began collecting signatures in March 1995, the number required was 237,000. Firefighters promoted their opinion that the proposed restructuring would reduce their ability to put out fires and were confident that they would get enough signatures on petition to warrant a referendum. They felt that the public would be supportive of an initiative to override Fire Service restructuring, given the response to reforms in the health and education sectors.

In the setting of establishment and minimum shift manning (M.S.M) numbers, the criteria to be considered were provided in the employment contract. The expired collective employment contract, the clauses of which were transferred to individual contracts, held that the operational needs of each district and the health and safety of the members of the brigades concerned needed to be taken into account when determining or changing the numbers of firefighters employed and on duty at any time. It was the Union's argument that neither of these criteria had been properly considered in the Service's proposals to reduce firefighter numbers. The Union postulated that such reductions would be detrimental to operational capabilities, the health and safety of firefighters, and that the employer had provided no evidence or documentation to support the reduction in services.

On November 11, 1994, the Union reported that it had filed the required papers with the Clerk of the House of Representatives to formally commence the referendum process. The official question at this stage was: Should the number of firefighters employed in the New Zealand Fire Service be reduced? The development of petitions and organisation of signature collection was interrupted by the accidental distribution of

information packages directly to employees before negotiations were to commence on February 23, 1995. The resulting legal injunctions, court hearings, and media activity saw the postponement of signature collecting until March. It was the type of restructuring proposals such as the one outlined in the employer's information package that the Union was trying to combat through the referendum process.

The citizens initiated referendum was a prime example of political campaigning by the Union to publicise their opposition to Fire Service reforms. The period of time spent organising the referendum witnessed a wide range of political lobbying and protesting to reinforce the Union's commitment to their opposition of restructuring proposals. For example, on February 28, 1995, approximately 300 firefighters from around the North Island marched to the Opening of Parliament. In a press release issued that day, the Union stated that "firefighters will remind politicians and especially the Government – that they bear the ultimate responsibility for public safety. This Government must accept that responsibility and direct Fire Service management to continue a safe level of staffing in the Fire Service."

Firefighters commenced collecting signatures on March 7, 1995. They defied management orders not to collect signatures while on duty, and admitted their intentions to defy orders banning them from wearing their uniforms while collecting signatures. However, firefighters reported that members of the public were going to fire stations asking to sign petitions, which precluded adherence to such orders. Firefighters had 12 months to collect the 240,000 signatures required to initiate a referendum, however half the required signatures were obtained within two weeks of commencing collection. On April 5, 1995, firefighters formally presented petitions with more than 400,000 signatures to Parliament, making it the first to meet the criteria for a Citizens Initiated Referenda Act 1993. Subsequently, the Governor-General Dame Catherine Tizard would set a date for the referendum, which must be held within a year unless 75 per cent of MPs agreed to defer it. In this case a deferral was considered unlikely as the Labour Party supported the referendum. On May 30 1995, the Union received notice of the formal and official receipt of their petition and the referendum question:

Pursuant to section 21 of the Citizens Initiated Referenda Act 1993, the Speaker informed the House that he had received a petition from the New Zealand Professional Firefighters Union seeking a referendum on the question:

"Should the number of professional firefighters employed full-time in the New Zealand Fire Service be reduced below the number employed on 1 January 1995?"

and that the petition had been certified correct by the Clerk of the House under section 18 of the Act.

The petition was presented to the House.

Trevor Mallard, the Opposition Party's spokesperson on Internal Affairs, informed the Union that he understood that it would be recommended that the referendum be held by postal ballot in October. The Union supported this method of holding the referendum, or the alternative of including the ballot papers with a concurrent by-election. It did not promote the implementation of a separate referendum held especially for the Fire Service issue. The Union was of the opinion that the Government chose to hold such a referendum because it was expected that the turnout would be lower than for a postal referendum. Consequently, it was also able to apportion blame for the cost of the referendum to the Union, which became fodder for subsequent media campaigns against the Union.

5.4.2 Management's Response to the Referendum

Fire Service managers stated they had no concerns about a referendum and that the Union had a right to try changing the playing field, but that the current package was the best that could be offered to the Union. On March 9, 1995, the Fire Service Commission applied to the Employment Court for an injunction to prevent firefighters from collecting signatures while in uniform, on Fire Service property or during work hours. The application was declined, and instead adjourned until April 10. In a notice to members, the Union reported informing the Court that "whilst it would continue to solicit signatures from members of the public, it recognised firefighters were bound to perform their duties and it had given no instructions that signatures could be collected on Fire Service property or by firefighters when in uniform or on duty." The Union also advised members that they should refrain from doing anything to give the commission reason to return to court before April 10. The Fire Service warned it was prepared and able to return to court at two hours notice if firefighters continued to collect signatures while on duty or in uniform.

Despite events, talks between the two parties were continuing. The chief executive reported that these talks could lead to a situation whereby the referendum process would be rendered redundant. Though positive comments were being made about the status of negotiations, the chief executive was reluctant to put the cuts on hold, despite recommendations from political parties and public support for firefighters. To justify this approach the Fire Service employed a 'socially responsible' attitude by claiming that in doing so they would be avoiding preventable deaths as a potential strategy for evading any

effects or consequences resulting from the referendum. Minister of Internal Affairs at the time, Warren Cooper, stated that he did not believe “most New Zealanders would sign up to the idea that firefighters should be allowed to sit around waiting for fires when they could be working actively to prevent them” (booker, 1995: 1). The Parliamentary Select Committee considering the Union’s petition recommended that the referendum take place, but the committee’s chair, Graeme Lee, did not believe that the Service’s restructuring needed to be put on hold. Mallard argued that if the Government was going to proceed with the referendum then they should at least hold it before events made the result redundant.

Through the media, the Fire Service Commission chairman, Ken Comber, accused firefighters of misleading the public about consequences of restructuring in the Service in order to get people to sign their petitions. Comber claimed that if the public were more aware of firefighters’ employment conditions then fewer would be willing to sign the petitions. Firefighters were also accused of living in a timewarp in their attempts to retain existing conditions. Following the Service’s argument that firefighters actually work for only 17.5 hours of their 42-hour rosters, it was emphasised that little time was left for meeting the growing need for fire prevention and safety education, and emergency planning. Comber was resolute in his intentions, stating “standing still is not an option. Doing nothing is not an option” (New Zealand Herald, 1995b: 1). In correspondence with the Union, chief executive Maurie Cummings stated that the changes to be made had been carefully considered and believed that the Service could be made more efficient and effective without any corresponding reduction in service quality.

The Service announced that while the Union’s arguments regarding restructuring were consistent, they were predicated on flawed logic. This logic revolved around the premise that there was a relationship between the number of firefighters and the quality of service provided. The employer then suggested that the referendum question should be reworded to include public safety issues and offered to help draft an appropriate question. For example, the Service wanted the referendum to query if the public opposed reductions in firefighter numbers for the sake of efficiency if they would not affect the quality of service provided to the public. It was argued that the Union had not demonstrated the alleged link between firefighter numbers and public safety, as is assumed or inherent in the referendum question. The Service pointed out that volunteer firefighters have always performed the same job as professionals, so the restructuring would not impact upon service quality or response times. Despite this argument, the Union’s petition progressed,

making it the first to meet the criteria and succeed in initiating a referendum under the Citizens Initiated Referenda Act 1993.

5.4.3 A New Era in Industrial ‘Warfare’?

By the end of March 1995, over 300,000 people had signed a petition, despite the employer’s attempts to restrict the collection of signatures by issuing orders to firefighters and seeking an injunction. The employer’s legal actions served to bolster the Union’s commitment to the referendum, which took the industrial dispute to an entirely new level of strategic choice and development. The Union sought to involve the public in what many saw as essentially an industrial relations matter unfit to be the subject of a referendum. To these critics the referendum was considered an outcome of an ongoing impasse in industrial negotiations between the two parties. Social and political debate focused on whether proposals for restructuring and decreasing firefighter numbers was in fact appropriate for a referendum, allowing the public an opportunity to sway public policy. Furthermore, it was questioned if allowing such a topic to be the focus of a referendum would introduce a more extreme and highly expensive strategic weapon to an industrial dispute.

The cost of \$10 million to taxpayers to hold the referendum also drew criticism, particularly from the Government, against firefighters and their Union. The referendum cost the Firefighters’ Union \$500 for an application fee and the resulting referendum would cost taxpayers approximately \$10 million. As such, it was questioned whether a citizens initiated referendum was an expedient strategy to use to further one party’s position when such an issue could be better solved in the Employment Court. Proponents of the perspective that this issue was an industrial relations rather than a political or public safety issue utilised the high cost of the referendum to sway public support for firefighters. The lack of obligation on the part of the Government has also been a key criticism of the Union’s decision to initiate a referendum. A citizens initiated referendum is non-binding, whereby the Government is not required by law to action any changes as a result of a referendum outcome. Various interest groups also condemned the Union for initiating the referendum. The Federated Farmers censured the Union for using the referendum as a propaganda tool to further their position in pay talks while wasting taxpayers’ money. According to Stuart Collie, the Federation’s vice president, firefighters had “hijacked a serious procedure as a fatuous political stunt” (Dominion, 1995b: 2).

The Prime Minister, Jim Bolger, stated that he believed firefighters were misusing the citizens initiated referenda process, the legislation for which his own government enacted. Bolger announced he would rather use the \$10 million a referendum would cost on extra health and education services. However, this merely provided fodder for the Union, who pointed out to the public that these sectors had been “decimated” without a referendum in which the public could have their say on the future of these public services (Dearnaley, 1995a: 7). Firefighters and their supporters believed the issue went beyond the bounds of an industrial dispute, becoming an issue of contention that amalgamated many topical debates. These included the subject of public safety, the nature of emergency services, and to what extent these services should undergo the processes of reform that had taken place within other public services with varying degrees of success.

Thus, the debate revolved around the basis of restructuring, with firefighters arguing that there was a link between the number of professional firefighters employed and the level of service provided, while the Fire Service issued assurances that the same level of service could be maintained while achieving efficiencies by reducing staff numbers. Because the Union could not consider the Service’s proposals to be either efficient or effective, they asserted that the employer was focusing on the economic justification for restructuring. The Union continued to argue that the issue was a matter of national importance. According to Derek Best, “these cuts have absolutely nothing to do with roster changes or employment contract negotiations. This is not an industrial dispute” (Barton, 1995: 11). Nor was it expected that the referendum would bring an end to the dispute.

5.4.5 The Progress of Negotiations during the Referendum Campaign

By the end of 1994, the employment relationship had further degenerated to become even more adversarial. On one side, the Union was demanding, among other things, a one-off \$5000 stress payment to be made to each firefighter as compensation for the stress and uncertainty associated with the Review and the resultant restructuring. A corresponding employer proposal was equally ambitious in its demands, including a 56-hour roster, removal of clauses allowing firefighter input into M.S.M. and Establishment levels, and a demand that firefighters would not undertake secondary employment.

Negotiations resumed in January 1995, where the employer introduced its accountability to the State Services Commission as a reason for rejecting the Union’s

proposal and demands, stating that the commission would not agree to the proposals and that it has the power of veto. This introduced the influence and power of the third party to negotiations, whereby the employer attempted to persuade the Union that their inability to make concessions was due to external forces. However, the Union cited section 17C of the Fire Service Act which states that the chief executive, on behalf of the Fire Service Commission, is responsible for "...negotiation terms of employment." There is no qualification to this statutory responsibility referring to the State Services Commission. In fact, section 83 of the Act states that every reference to the State Services Commission in Part IV of the State Sector Act "...shall be read as a reference to the New Zealand Fire Service Commission." It also highlighted that the chief executive should consult with the State Services Commission prior to entering negotiations, and that either before or during negotiations, the commission may indicate that they wish to participate in the negotiations. In citing this legislation, the Union requested that if the State Services Commission was in fact the driving force behind the employer's refusal to negotiate, then they should attend the negotiations.

Commitment to Bargaining Position: The Union

In May 1995, the Union committee finalised and approved an official 10-point plan to present to the employer (see Table 5.1). This document outlined the Union's most important agenda issues, effectively presenting evidence of their utilities to the employer's bargaining representatives. The plan was formulated in an attempt to reduce claims to a minimum in order to reach a settlement.

1. 6 per cent wage claim
2. Minimum Safety Manning (MSM) levels as per attached schedule
3. Provision of protective clothing to each Operational Officer and Firefighter in accordance with existing standard developed by working party
4. Objectives of Contract – no new work without negotiation
5. Superannuation – offered to all workers covered by contract, states minimum employer subsidy
6. Medical Retirement / Medical Insurance
7. Deputy District Chief Fire Officer allowances
8. Oil Recovery Team allowances
9. \$5000 Stress Payment
10. Term of Contract – 12 months

Table 5.1. NZPFU proposal for settlement of an Employment Contract for Firefighters/Officers/Control Room Staff presented to the employer's Bargaining Agent on 11 May 1995

The Union considered the Service's response to their 10-point plan to be a relatively "hard line approach ...that continued the 'do it our way line.'" The employer argued that the 6 per cent wage claim and the \$5000 stress payment could not be taken as serious propositions. This argument was buttressed by the employer's requirements that any wage increases needed to be offset by equivalent or greater savings made elsewhere. This can be interpreted as a demand for greater concessions and trade-offs to be made by the Union if they wished to see the long-running wage freeze end. Consequently, the Union perceived the employer's response to the 10-point proposal as the assertion of their managerial prerogative in the running of the Service. However, despite this response, the Union continued to ask the Service that they too commit to key agenda points.

Research measuring perceptions of conflict and of opponents' views has found that parties to negotiations often tend to have divergent interpretations of what constitute critical issues to the dispute (Robinson and Friedman, 1995). Furthermore, a tendency was discovered where a party would claim that their views originated from factual evidence while their opponent's views distorted facts and evidence. During negotiations in June 1995, the Union identified budgetary constraints as a key impediment to the parties settling the dispute and negotiating an employment contract satisfactory to all constituents. They proposed a joint approach, whereby a two or three party combination, incorporating the Union, chief executive, and the Fire Service commission, could approach the

government to seek approval for a budget increase to allow the Service to operate properly and perform its statutory functions. The Union highlighted that one of these statutory responsibilities was to be a good employer. The Union believed that the weight of evidence that could be presented to the government could sway the government to approve, at least, restoration to previous budget levels. The Union suggested that this could be achieved considering the political climate at the time and the fact that the government is only required to meet 8 per cent of any budget increase. However, the Fire Service was of the opinion that the major impediment to settling a contract was not budgetary constraints, but the Union's unilateral opposition to any changes recommended for improving existing roster inefficiencies. While the Union had looked beyond the negotiating relationship to identify means of expanding the 'fixed pie,' the employer identified the Union's ideological stance as a critical issue. This may have been a tactical move to manipulate the Union's assessment of their own utilities and intended to place pressure on the Union to re-evaluate their position regarding restructuring objectives.

Commitment to Bargaining Position: The Fire Service

Despite arguments from the Opposition party that restructuring should be postponed until the result of the referendum was known, the chief executive reported the Service's intent to proceed with restructuring. In a letter to the Union, the Service censured the Union, stating that its response had been to "defend an entrenched position by public action rather than to pursue cooperation through internal dialogue and discussion." The Service's manager of human resources offered to consult with the Union but they would not continue to postpone the introduction of proposals necessary to achieve the efficiencies and economies required of the Service. As such, the Service stated that they could not keep the offer for consultation open indefinitely and unless the Union responded within seven days to set a date for consultation to occur within 14 days, the Service would introduce the proposed changes without consultation.

The Service also highlighted the cost of the Union's claims, arguing that the 10-point proposal retaining the 42-hour roster would cost \$16 million despite the Union conceding their 20 per cent pay demand in favour of a 6 per cent increase. The parties were to resume negotiations in July, where the Union iterated its commitment to the 10-point plan in addition to requesting that further restructuring be postponed until after the referendum. Management hoped that the parties could find some common ground on the

roster issue before resolving pay negotiations. While firefighters took the stance that they did not need to work longer hours in order to maintain or increase the efficiency of service to the public, the parties managed to reach an interim position on wages by using the roster issue as a trade-off. The Union contended that if a paramount feature of a contract was for firefighters to deliver improved service then the parties should focus on what firefighters do during their working hours before automatically moving to increase them. The Union then proposed a settlement based upon four points that they felt they could recommend as a settlement to members. These four points included a 6 per cent wage increase, a one-off \$4000 payment in recognition of firefighters' stress, that weekend routine hours be changed to those of weekdays, and a contract term of three to six months. This proposal would have resulted in an increase of routine hours by 16 hours per week.

The Kennedy Affair

In June of 1995, Royd Kennedy announced that he feared for his safety because he supported the Service's restructuring proposals and the opportunities they offered for increasing public safety. A firefighting hero, in 1990 Kennedy was awarded the George Cross for crawling under a burning, overturned petrol tanker to comfort a schoolgirl trapped underneath. Mr Kennedy announced his withdrawal from the Union due to differences of opinion, disagreeing with the Union's steadfast opposition to reform of the Service. On leaving the Union he stated he felt he had to be careful at fire calls as a result of the intimidatory behaviour from other firefighters. "It's a noisy, clattering exercise walking the streets of Auckland in a breathing apparatus with all the knives I wear between my shoulder blades as a permanent fixture" (Barton and Norris, 1995: 1).

The president of the Auckland branch of the Union, Mike McEnaney, asserted that there was no foundation to suggestions that there was a campaign of harassment against Kennedy. The Union iterated that they were not entirely adverse to reform, but that they did not advocate changes that put firefighters' lives at risk by promoting longer shifts and fewer staff. However, according to Kennedy (1997: p.123) the Union was trying to make the Fire Service change without offering to change too, or "demanding without trading off." Kennedy (1997: p.179) commented that the Union also needed modernising:

The old empire-building attitudes and power trips, the old fixed idea of workers against the bosses, have gone or are going, in unions all around the country. But the Professional Firefighters' Union is one of the last to cling to these outmoded notions, and fiercely fights change, at all costs, even at an emotional cost to firefighters. Men

leave the service because although they want change, they are not allowed to consider it. Change is said to mean being a traitor to the cause. What cause?

Kennedy's claims that he was being intimidated into leaving the Service were soon followed by allegations that money had been offered to have him beaten. The Union responded if such an offer had been made, firefighters would have heard about it through rumour rather than by a media "bombshell" (Gregory, 1995: 2). The Auckland Chief Fire Officer, who said that the man to whom the offer of money had been made had reported the incident, supported Kennedy. The Minister of Internal Affairs also commented on the issue, remarking that Kennedy, like others, appeared to be bearing the consequences of refusing to "toe the union line" (Dearnaley, 1995b: 3). The Union rejoined that the allegations were merely part of a campaign on the part of the Fire Service to discredit firefighters as the referendum approached. Consequently, the Fire Service laid a formal complaint with the police regarding the alleged intimidation. The Union welcomed these actions, stating that if such intimidation and harassment was taking place within fire brigades then it was a matter that should be dealt with through official channels. However, it was the Union official making these comments, Mike McEnaney, who was later linked by Police Minister John Luxton to the 'contract' put on Kennedy. Labour MP Trevor Mallard interjected that it was inappropriate for the Minister to involve himself in a situation currently under police investigation.

In September 1995, the police investigating the allegations reported that they had found no offences in their inquiry. On hearing this, the Union issued a media release stating they had always considered the charges to be politically motivated. "They were made public at a time of delicate award negotiations, and at a critical period when the employer was attempting to impose a draconian set of working conditions on our members." While the Fire Service stood by the allegations of harassment, no further action was taken after the conclusion of the police investigation.

The Impact of Restructuring: Firefighters offer to work without pay

Early in July 1995, firefighters in Auckland and Wellington offered to staff appliances free of charge in order to compensate for job cuts in these areas. However, the National Fire Commander, Kerry Everson, stated it was "just a point-scoring exercise to curry favour with the public..." (New Zealand Herald, 1995c: 2). Reports suggested that up to 400 Auckland firefighters offered to work beyond their normal hours until the public

referendum on Fire Service cuts was held in December. The offer was refused by Fire Service management on the basis of legal advice warning that non-rostered staff attending fires and other emergencies would create under the Health and Safety in Employment Act (1992). According to the Union, “because of the clear public support firefighters received from the public through the collection of signatures for the citizens initiated referendum, firefighters believe they owe a similar duty to the public to stand by them” (New Zealand Herald, 1995c: 2). However, Everson rejected the Union’s claims, emphasising that the same number of frontline firefighters and appliances would be responding to emergencies. When two Auckland firefighters turned up to crew specialist appliances despite the Service’s refusal of their offer, they were threatened with instant dismissal by Fire Service management. Accompanying the firefighters were approximately 50 Union members who marched to the Auckland City station when the off-duty members assumed their positions voluntarily. Similar scenarios occurred in Wellington and Christchurch, where firefighters continued protests after the firefighters offering to work for free left their posts under threat of dismissal. The Union’s national president, Gordon Duncan, described the Service’s threats as draconian but the Fire Service refused to tolerate firefighters’ “grandstanding” and that it was not the Union’s role to interfere in the management of the Service (New Zealand Herald, 1995d: 4).

The Effect of Legal and Political Activities on Negotiations

The series of events during 1995 that resulted in the Union seeking an injunction against the Fire Service in order to prevent it communicating directly with firefighters had a significant impact on the processes and events associated with the referendum campaign. The initial Employment Court ruling placed significant restrictions on the Service’s ability to put forward their argument for reducing firefighter numbers. The Court decreed that the Fire Service should not be allowed to circulate information regarding employment contract negotiations through the media without the authorisation of individual employees.

While the Union perceived the referendum in terms of questioning the number of firefighters needed to maintain service quality, the Fire Service argued that it was an issue of work rosters. In the employer’s opinion, if working hours were expanded to incorporate the 56-hour roster concept, firefighters would work longer hours and therefore fewer of them would be required to maintain a quality national Fire Service. Thus, the court’s decision that for the Fire Service to discuss rosters and other issues associated with

contract negotiations without the authorisation of employees would contravene the Privacy Act, restricted the Service's ability to present their argument. According to chief executive, Maurie Cummings, "if we can't talk about the rosters how can people make up their own minds what is fair and reasonable?" (Rotherham, 1995: 20). The Union's argument supporting the ruling was predicated on the notion that the Service should treat its employees equally. Derek Best, Union secretary, announced that "the salary package of the commission staff remains private and confidential while the remuneration package for firefighters is broadcast high and wide. That's a double standard" (Rotherham, 1995: 20). The Employment Court ruling was subject to a successful appeal by the Fire Service but its precepts had to be obeyed until that hearing.

Negotiations between the two parties continued to progress despite the legal and political activities surrounding this industrial dispute. Whilst the parties were citing allegations against each other in court and the political arena, both of which were followed closely by the media and subject to much public speculation, negotiations progressed. The Fire Service was unable to comment on the proposal and state of negotiations due to the Employment Court injunction preventing it from communicating about contract issues to the media or public. The ruling also impeded the Service in putting forward their perspective and justification of restructuring issues embodied in the referendum question. The Service very carefully outlined their stance, emphasising that change was necessary to correct existing inefficiencies. Statistics were cited that held only 5 per cent of firefighters' working hours were spent dealing with incidents, with 60 per cent of working hours enjoyed as stand-down (New Zealand Herald, 1995e: 1). This concluded that the Service's employment conditions were an inefficient use of funds, as their employees were mostly paid to rest while on-call.

Due to the nature of the service provided, incidents for firefighters to respond to, and thus be working during their rostered hours, cannot be scheduled but there must be firefighters on-call at fire stations at all times. This prompted the question, how could firefighters' work be made more productive and therefore labour costs made more efficient? The Service's solution was to increase working hours and reduce the number of firefighters employed. While firefighters would still be allowed stand-down time, because there would be fewer of them, labour expenses would be reduced. Some roster proposals such as the 40-hour week roster with its standard 8-hour shifts, incorporated either no or minimal stand-down period. This move to reduce stand-down time was supported by arguments that it is a historical concept rooted in working conditions that are no longer

practised. Stand-down periods while on duty originated from the British Navy, which, it is argued, also resulted in an emphasis on specialist appliances being retained on standby with a full crew. The Service argued it would be more sensible to call on crews from other areas only when these appliances were required (New Zealand Herald, 1995e: 1). This evoked the Union to contest that the chief executive had no idea of how the Service actually worked, and that to remove crew from specialist appliances and call on firefighters from elsewhere when needed would consume valuable time. However, the Service supported its propositions by contending that standards of speed and extent of cover were also outdated as modern fire-resistant building materials and general preparedness for disaster suggests fires do not spread as quickly or as far as they used to. Despite the employer's reasoning, the Union remained committed to retaining the 42-hour roster. Before increasing working hours and changing the entire shift systems, they proposed finding means of making the current working hours more efficient. To this end, the Union conceded it could increase by 20 per cent the routine hours worked during their shifts.

5.4.6 Management's Tactical Choices

In order to respond to the Union's political strategy, including its initiation of a referendum, the Fire Service pursued several tactical choices designed to facilitate the forcing strategy in the attainment of its objectives. Furthermore, management engaged in a campaign in which the two parties participated in what could be described as a media war, with each denigrating the other's motives and propounding their own, more important, objectives. In an endeavour to undermine support for the Union, management emphasised the alleged internal war between professional and volunteer firefighters by accusing the professionals of harassing their volunteer counterparts.

Level of Negotiations: Withholding Bargaining Authority

The Union iterated their request that negotiations be held at the highest possible level between the two parties. They propounded that the negotiations required the direct involvement of the full Union committee and the Fire Service executive management team. While this was acknowledged to be an unusual method of proceeding, the Union believed it was necessary if progress was to be made.

While it may be merely a matter of convenience and delegation, the use of representatives from lower levels of the Fire Service in negotiations could also be considered a deliberate strategy intended to frustrate the negotiation process. It may have been intended to thwart the Union's achievement of concessions from the employer's representatives by restricting the mandate and decision-making authority of those representatives. However, rather than leading the Union to make concessions in order to progress negotiations in the face of such obstacles, the Union has instead pragmatically accepted the employer's continual requests for adjournments in order to consider Union claims and receive further instruction from management. The Union repeatedly complains about these impediments to the advancement of a contract settlement, but appeared unlikely to impart concessions to overcome these. Instead, the Union consistently iterated its requests that negotiations comprise representatives from higher levels of the Fire Service.

A Contract Offer: the Tactical Use of Timing

In mid-November the Union received the contract offer promised by the employer almost two months earlier. The Union promptly labelled it a publicity stunt by the employer, suspicious that its presentation was delayed until just before the referendum was to take place. The Union reported that it differed little from packages already offered and included overall pay cuts for frontline firefighters of at least \$3000 per annum. However, the new offer incorporated a 37.5-hour roster, which the Fire Service believed firefighters were more amenable to, and a 10 per cent wage increase. Implementing a 37.5-hour roster required more staff, prompting the Union to question why the Fire Service was encouraging the public to vote for staff cuts while offering rosters which required the recruitment of more firefighters. It was also noted that the Service had not yet withdrawn a previous restructuring document issued earlier in the year that specified 385 firefighters' jobs would be disestablished. The Union announced it would wait with interest to see if the contract proposals would be withdrawn after December 2, the date set for the referendum.

Level of Negotiations: 'Divide and Conquer'

The Fire Service insisted on approaching individual firefighters to verify that the Union remained their authorised bargaining agent. The Union argued this was unnecessary and a means of inconspicuously exerting influence over employees. It was also viewed as a preliminary to attempts to break individuals away from the Union. The employer also suggested that there should be a separate employment contract for controlroom staff, and that these contracts should be collective but developed on a regional basis. Vic Hewson, human resources manager, also advised the Union that he would be seeking individual employment contracts to be negotiated at the regional level for the Service's fire safety staff. Rather than as a means for achieving efficiencies, the Union viewed these overtures as tactics designed to break the Union into smaller groups, thus curtailing their unity and diminishing the bargaining power and strength obtained from member numbers. The employer was informed that further harassment of Union members, for example, if the employer continues to enquire about the authorisation granted to the Union, would result in a legal challenge from the Union to prevent such actions. The Union asserted that it expected a single contract for all members. In addition to confronting the Union with such controversial and contentious issues, it could be argued that the Fire Service employed shock tactics to divert the Union's attention away from the upcoming referendum to focus on retaining their strength of organisation.

5.4.7 The Implications of Management's Strategies and Tactics

The Service's tactic of making a renewed contract offer just prior to the referendum backfired when the Union incorporated its components as their new bottom line for negotiations. The Union reported to the media that in considering the offer that the employer had made before the referendum, it believed the parties had achieved a new measure of agreement. When taking the employer's last offer into account, the Union believed that 10 of their 12 points had been publicly agreed to in principle. Based on this offer, the Union put forward a contract offer that included a 10 per cent wage increase, employer-funded insurance benefits, and reduced hours of work sought by firefighters. These items were included in proposal made by the employer just prior to the referendum, which led to the Union modifying its requests to reflect what the employer indicated was on offer. Furthermore, as the employer's proposed roster system involved hiring more firefighters, the Union iterated its request that guarantees of staffing levels be included in

the contract. Derek Best stated in a press release that “if Fire Service spokespersons are prepared to stand by statements made and publicity prior to the referendum, then this proposal of the Union must at the least form the basis of a settlement. After all almost all the issues have some agreement already in principle.” However, when negotiations resumed in December, the Service reported that negotiations were still suffering from fundamental differences underlying the parties’ approaches. The Union retained its desire to use the expired collective contract as a starting point for negotiations, while the employer wanted to develop an entirely new and radically different contract.

5.4.8 The Union’s Strategic Choice

The referendum was a politically motivated strategy on the part of the Union, designed to forestall the employer’s unilateral implementation of restructuring. The Union disputed the managerial prerogative to solely determine changes in service firefighters provided to the public. Thus, firefighters sought the formal and official support of the public and other interest groups after previous attempts through the media had failed to produce an effect. The Firefighters’ Union often used the tactic of seeking and demonstrating public support during the course of the dispute. However, the campaign to initiate the referendum process sought to strengthen the influence of public opinion on the policy-making process by the use of a formal political process. The Union’s key aim in initiating the referendum was to force the Fire Service to abandon their position on staffing levels – an agenda item the Union established commitment to from the beginning – by amassing a majority vote from the public in support of that position. The underlying precept was that if the Union were able to demonstrate that a substantial portion of the public were opposed to the restructuring proposals, then the Government, as elected representatives of that public, might feel compelled to abandon or at least reconsider the reforms. This strategy indicates an escalation of the Union’s commitment to their position, whereby the informal influences of community and interest group’s opinions were no longer able to sway the intentions of management. The Union was able to exploit the public’s high opinion of firefighters and the argument that as they performed a public service the public should be allowed a voice in what happens to that service.

Politics are recognised as having a major influence in public sector negotiations as the employers’ decision-making processes tend to be shaped by political forces. In order to influence the decision-making process, interest groups need to have political access to

key decision-makers and effectively utilise that access to further their own interests (Lewin et al., 1988). Scholars have considered the issue of whether public sector unionism is compatible with democracy (Lewin et al., 1988; Cohen, 1988). This contemplates the situation where a public sector union may develop a stronger influence in decision-making than any opposing interest groups and effectively be able to almost dictate their employment terms and conditions to the government, and consequently, the taxpayer. However, in this particular dispute it could be argued that the influence of various interest groups keenly rivalled that of the Union, and as the Union would argue it, the public interest.

This episode, more so than any other during the dispute, demonstrates the inherently multilateral nature of negotiations in the public sector. Recent reforms to governance issues within government departments and entities have meant that employment negotiations have been predominantly bilateral in nature. Such reforms have granted the management of these units the autonomy and responsibility to conduct negotiations on behalf of the Government. However, the hierarchy of the public sector still enables a multilateral approach, which provides unions with multiple points of access to decision-making processes and levels of influence (Lewin et al., 1988). Thus, the Firefighters' Union has been able to lobby at levels higher than that involved in bilateral negotiations, such as the Department of Internal Affairs, under which the Fire Service is operated, and both the governing and Opposition parties.

A union strategy as demonstrated by this event has also been to focus on involving the public in order to influence the public policy-setting process and thus promote the union's position. Kochan (1988) proposed that the greater the degree of internal conflict amongst management officials, or within the government, the more likely that multilateral negotiating would occur. Thus, the union could employ tactics to exploit differences in opinion amongst parties in the government (Chamberlain and Kuhn, 1969). For example, it became apparent that some members of the coalition Government were uncertain of the justification for restructuring the Fire Service, as were members of the Opposition. The Firefighters' Union overtly lobbied these parties and requested Union members and the public to write to their Members of Parliament seeking support in their opposition to restructuring.

5.4.9 The Result of the Referendum Campaign

On December 2 1995, the firefighters' referendum asked voters "should the number of professional firefighters employed full-time in the New Zealand Fire Service be reduced below the number employed on January 1, 1995?" Of the 652,000 voters who cast valid votes, 572,760, or 87.82 per cent, voted 'no,' in favour of the firefighters' view. The Union announced the results as a tremendous achievement by firefighters and waited to see how the Government would act in the face of such overwhelming opposition to restructuring in the Service. The Fire Service stated that future action regarding staff numbers had become an issue for the Government to determine, but iterated that its preferred course of action was to implement restructuring as planned.

5.5 Conclusion

Management's initial approach to negotiations was determined by the strength of their objectives, consideration of their bargaining power, and their willingness to endure the costs ensuing from their actions (Walton et al., 1994). These include the tangible and intangible costs associated with a forcing strategy that were considered worth incurring given the potential savings inherent in the restructuring objectives. For example, management sustained the indirect costs associated with an increasingly antagonistic employment relationship. However, subsequent strategic and tactical choices were influenced by a number of features, including environmental factors, the Union's responses, and the changing nature of the bargaining relationship (Walton et al., 1994). When the Union withdrew notice of partial industrial action in favour of a total strike, the Fire Service indicated its readiness to accept the Union's industrial action, including developing contingency plans to deal with emergencies during the strike. However, while trends in industrial disputes indicate that employers are increasingly willing to endure strike action, the Fire Service exploited what is normally a display of union power to actuate the balance of power in its own favour. Management refused to reveal the extent of contingency plans but simultaneously highlighted the possible inadequacies of such plans. By referring to possible consequences of firefighters' strike action and establishing that the Fire Service would not be accountable for any damages such as loss of life or property, the employer effectively undermined public support for the strike.

Further to its initial forcing strategy, when the Fire Service felt that the Union's role as gatekeeper to the workforce was impinging on the success of its negotiating

strategy, it sought to bypass the Union. Whether this equated to bypassing the Union as a bargaining agent was argued in the Employment Court but later overturned. However, it arguably constituted bypassing the Union as the official channel through which communications with employees should be directed. While the employer was not seeking to eliminate the Union from negotiations, it did operate to undermine the authority and position of the Union's officials in an attempt to persuade firefighters of the fairness of its contract offer. This event emphasised the employer's increasing lack of respect for the Union as an institution with a valid and legitimate role in employment negotiations. The Union had already conceived its plan to initiate a citizens referendum when management sent out its information packs to employees, however, this served to aggrandise firefighters' commitment to the referendum process.

The citizens initiated referendum section focused predominantly on Union activities designed to combat the employer's use of a forcing strategy. During this period the employer engaged tactics to counterbalance the impact of the Union's referendum campaign. Taking place simultaneously were employer activities designed to undermine the Union's bargaining authority and engender divisions within their constituency, such as attempts to decentralise the level at which negotiations could take place. Alternatively, those activities could also be interpreted as tactics designed to overcome the Union's influence over its members and their position as gatekeeper between employer and employee.

As the dynamics of distributive bargaining unfolded, where one party advanced the implementation of its strategy, the other party engaged a more severe rejoinder. Thus, a spiral of increasingly severe and committed forcing strategies ensued while the nature of the employment relationship suffered a proportionately inverse decline. It can be argued that the period of negotiating activities that followed the 1995 referendum constituted a move towards unrestrained forcing, as demonstrated by increasingly adversarial tactics.

Chapter 6.

ESCALATION OF COMMITMENT: FROM FORCING TO UNRESTRAINED FORCING AND BACK AGAIN

6.1 Introduction

Whilst the preceding chapter analysed the Fire Service's initial strategic choices, particularly the decision to adopt a forcing strategy, this chapter illustrates the dynamics that can lead to an escalation of commitment. As successive tactics and approaches to negotiating a new employment contract, and thus, organisational restructuring, failed to effect the desired change, the parties' tactical behaviour became increasingly hostile and antagonistic. The progression the parties' escalated commitment to their objectives and a strategy with which to achieve them can be traced through the introduction of the community safety teams (CSTs). The employment of a second group of firefighters employed on disparate terms and conditions can be interpreted as a move to bypass the Union in order to impose the coveted employment contract on the workforce. Managerial actions aimed at hiring professional firefighters on the CST contract added substance to such interpretations. However, when the Union maintained its resistance to the employer's efforts, negotiations proceeded to a state of unrestrained forcing. In May 1998, the Fire Service Commission announced that all firefighter positions were to be disestablished, accompanied by the offer for firefighters to apply for the new fire officer positions. This stage of the dispute provides an excellent example of the impact of unrestrained forcing and how the parties can subsequently begin to rebuild the employment relationship.

6.2 The Community Firefighter Model: The Introduction of Community Safety Teams

The information package at the centre of the *Ivamy* cases contained the Service's initial reference to the community firefighter model. The community firefighter model was developed through a process of examining how the Fire Service could provide a better service to the community. Its development was predicated on the question "are the resources where we most need them?" In answering this question, the Service took into consideration the fact that some volunteer stations were attending more calls for

service than some permanently staffed stations and in considering this, had to answer “no.” The report indicated that there were problems recruiting volunteer firefighters for day shifts, as most volunteers have other employment during the day and are on-call at night. Traditionally crews of permanent firefighters, known as yellow watch, have been recruited to staff volunteer stations during the day. These shifts tended to be unpopular with professional firefighters, so the Service designed the community firefighter model.

The community firefighter was a volunteer brigade position, receiving wages to be on-duty during the day but providing the regular volunteer cover at night. As such, recruits were required to be available for volunteer shifts at night. They were planned to staff some urban stations to take the place of professional firefighters. It was expected that as the use of this model shifted resources to where they were needed most, there would be no impact on standards of cover or service quality, with possibilities for improvements in some cases. According to the national commander, Kerry Everson, in the information packs sent to firefighters in February 1995, “aside from redressing the service to need balance the Community Firefighter model will also provide greater community involvement – essentially giving firefighters back to the community.” The initial position outlined by the Service indicated that currently employed professional firefighters could apply for a CST position provided they lived in the community they would serve and that they were willing to accept volunteer status.

6.2.1 Union Opposition

Initially, the Union believed the community firefighter concept was an innovation of the UFBA president, developed as a means of furthering the interest of volunteers. It was also impugned as an attempt to deunionise the Fire Service and cut wages in the areas where the community model was recommended. The Union claimed to have the support of District Chief Fire Officers and Area Chief Fire Officers (ACFOs), in addition to various interest groups, who all disagreed with the concept. It was considered unsuitable for some areas for which it was planned, with possible adverse effects on standards of cover and appliance response rates. The Union claimed that it would take crews consisting only of volunteers an extra six minutes to arrive at incidents in some areas. Instead, the Union argued the Yellow watch currently ensuring standards of cover during weekdays could be improved and a cost-benefit analysis should be conducted before any changes were considered. However, the Fire Service informed the Union it had fulfilled its obligation to consult first with the Union, and

subsequently planned to widen its consultation to include the Chief Fire Officers of the affected brigades, ACFOs, MPs, local government, the UFBA, and other parties.

In another attempt to impede the implementation of the CSTs, the Union questioned the legality of the Fire Service funding CSTs activities. It was maintained that the Fire Service Act did not permit spending of funds on activities such as identifying areas where flooding might occur, crime prevention, liaison between groups such as Neighbourhood Support Groups and sports clubs, and water safety programmes. The Fire Service responded to these allegations by pointing out that the Service was not solely funded by levy. Their rebuttal cited s 20(1) of the Fire Service Act, which states “it shall be a matter of prime importance for the Commission to take an active and coordinating role in the promotion of fire safety in New Zealand.” Following from this, the chief executive pronounced that CSTs were furthering the Service’s ability to perform their statutory responsibilities. The Union also questioned how the Fire Service could afford to put the CST concept into action, estimating that it could cost up to \$6 million in recruitment and training expenses. This estimate induced the Union to query how the Service could afford this expense given the stringent budget cuts imposed by the government that required the disestablishment of hundreds of professional firefighters’ positions.

A position paper issued by the Fire Service in May 1995 reiterated the Service’s rationale for restructuring, given that stage one as identified through the Internal and External Reviews had been completed. The two reviews, combined with a thorough analysis conducted by management, resulted in the identification of potential savings of \$28 million. It was highlighted that professional firefighters comprised only 15 per cent of total establishment numbers, staffing only 73 of the 430 stations nation-wide. In the position paper Mr Cummings stated that “it must never be overlooked that our volunteer FS are the backbone of the Service.” This ideology resulted in the Fire Service identifying a number of changes to utilise resources more efficiently. In addition to changes directly impacting upon the working terms and conditions of professional firefighters, the Service developed the Community Firefighter model as a means of ensuring the Service encouraged a closer relationship with and a better understanding of the local communities’ requirements. The chief executive avowed that there was no agenda to de-unionise the Service underlying plans to recruit volunteers. It was acknowledged that the Employment Contracts Act bestowed the right to determine

representation and that the employer would not interfere in that process if community firefighters wished to join the Union.

6.2.2 The Development and Implementation of Community Safety Teams

The Pilot

The implementation of a pilot scheme was commenced in July 1995. As a “gesture of good faith” the Union offered to facilitate the trial of a pilot Community Firefighter model, which was planned to take place in three brigades. Included in this gesture, however, were three qualifications that the Union requested the Service adhere to in its trial of the scheme. A guarantee was required that the individuals who participated in the trial would be able to return to their normal station position at the end of the trial if they wish. The Union also requested that they be fully involved in the trial’s evaluation. Finally, it was suggested that the parties agree on employment conditions prior to the trial for the individuals involved. In making this offer, the Union emphasised that it was not accepting the community firefighter concept but making an effort to ascertain any advantages of the model.

Conditions of Employment

The Union argued that the job description of community firefighters fell within the contract definition of firefighters, and as such, it was claimed that the new recruits already had individual terms and conditions of employment based on the expired collective contract. This contained a clause that enabled additional parties to opt into the collective employment contract. However, it eventuated that an employer is not obliged to offer the terms and conditions of an expired contract to new employees. The employer cited *Tutton v Pollock (Chief Executive, Aoraki Polytechnic)* [1994] 1 ERNZ 1 as setting a precedent for this issue. The employer’s view was later upheld in the Employment Court, where it was ruled that as the collective contract had expired, there was effectively nothing to be offered to the new recruits.

The requirement that CSTs act as unpaid volunteers at night and reside near their station drew criticism from observers. The Fire Service’s legal advisors cleared these conditions, but other parties did not agree. The Auckland Council for Civil Liberties condemned the conditions as harsh and oppressive, saying that to insist on

supplementary voluntary work as a requirement of getting the job was reprehensible. The Fire Service's approach to negotiations with the Professional Firefighters' Union and their plans to hire CST firefighters on different conditions also incited criticism from political parties and interest groups. As a result, the Government was also reproached for ignoring public opinion as expressed in the December 1995 citizens initiated referendum, which indicated the public's objection to restructuring the Fire Service.

It was rumoured that, in some cases, new recruits would lead CSTs rather than existing experienced officers, which was reported to concern some senior station officers. The Fire Service stated that it would ensure that the team leaders were experienced by drawing upon the skills and experience of people from the community. However, fire officers were also asked to apply for team leader positions, with the offer of a one-off 'equalisation allowance' to compensate for the wage differential between CST leader and fire officer positions. This offer was made only to fire officers and was not available to firefighters.

The new CST employment scheme was announced on January 26, 1996. Its advent was accompanied by Union accusations that the Service was hiring "cut-price firefighters," with the team members to be employed on terms of employment already rejected by professional firefighters. These terms included a 37.5-hour roster and a wage rate significantly lower than that of professionals. According to a Union media statement released that day,

The employer has abandoned any pretence of acting as a "good employer" as the Fire Service Act requires. No good employer in a vital emergency service such as the Fire Service could contemplate two workers operating side by side with one on cut price wages and conditions. The essential requirement for teamwork between firefighters could not continue under these circumstances.

The Fire Service, however, hailed the innovation as a world-leader in fire brigade reform, with significant benefits for service quality and public safety. In commenting on the Union's claims, management stated that CST members would not be paid a lower wage rate than existing firefighters. However, the Service would be able to realise cost savings by employing CSTs on the 37.5-hour roster that professional firefighters had previously refused. It was also revealed that the new staff would be employed on a mix of individual and collective employment contracts.

6.2.3 Union Strike Action and the Fire Service's Response

In a press release issued in March 1996, the Union claimed that local management had told firefighters that the reason the Service had developed CSTs was because firefighters had refused to sign a new collective contract. In response to the development of CSTs and frustration at more than three years of negotiations, two years since the collective employment contract expired, and several years since firefighters were last given a pay rise, the Union delivered nine strike notices to the Fire Service on March 15, 1996. Industrial action was to commence on March 31 1996 and involved firefighters' refusal to process paperwork, perform certain inspections, and any involvement, direct or indirect, in the training of new employees who were employed on a different contract than the expired employment contract. This industrial action was undertaken after a ballot of Union members showed overwhelming support of taking such action. In conjunction with strike action, the Union encouraged its members to embark on a campaign to inform the public of the "truth" about CSTs.

The chief executive advised the Union that selected members would be suspended for their part in the partial strike action. According to the Union, the employer's strategy to circumvent firefighters' industrial action indicated that "any pretence of being a good employer is gone. These people have proved themselves to be right at the bottom of the barrel of employers." Subsequently, firefighters were asked to donate money in order for the Union to be able to financially assist any suspended members. Firefighters were asked to consider their donation as 'insurance' in the event that they were suspended. However, the chief executive announced he had approved an \$8000 payment to be offered to non-union firefighters as an incentive to accept a CST contract. Mr Cummings confirmed that this offer could not be made to Union members as the employer was not able to negotiate while a strike was in progress. However, Mr Cummings stated that he would contemplate making the same offer to Union members if the strike notices were withdrawn.

Industrial action continued and subsequently five firefighters from various locations were suspended, approximately two weeks after strike action commenced. The Fire Service stated that while a ban on paperwork may appear relatively harmless, two weeks without the completion of reports and inspections could impact upon funding and safety issues. The suspensions did not galvanise the Union to withdraw the strike notices, but instead the Union publicly announced that the suspended firefighters must be reinstated before any negotiations between the two parties could be resumed. It was

also claimed that the Service enacted the suspensions in an attempt to force the Union into taking illegal action. However, the Union utilised the power of public opinion by stating that it was bound by issues of public safety to act within the law, no matter how far the Fire Service provoked firefighters.

Industrial action ceased on April 22, 1996 as “behind the scenes” activity accomplished the parties’ objective of resuming negotiations. The Fire Service agreed to the prerequisite that the suspended firefighters be reinstated before the resumption of contract talks. The Union claimed that the Service would be forced to concede that three weeks without the ‘corporate paper trail’ was effective action on the behalf of firefighters.

6.2.4 Fire Service’s Approach to Negotiations

During the initial developmental stages of the CST concept, negotiations proceeded in a similar vein to previous years, with each party outlining its position and asserting its commitment to achieving a contract that reflected that position. The Fire Service persevered with its attempts to procure a contract containing minimal clauses and few issues in order to attain the flexibility they desired. Negotiations were often adjourned at the request of the employer’s team, who repeatedly stated that they needed more time to consider the Union’s claims or issues raised, or that they did not retain the authority to respond to claims in meetings. During one such adjournment, the Union urged the employer’s representatives to use the time to provide an explanation as to why so many conditions and clauses from the expired contract needed to be removed from a new contract before it could be agreed to.

Once the CST model had been tested and its suitability determined the employer appeared to prevaricate on progressing negotiations, with the Union reporting difficulties in getting the employer to the negotiating table. The Union also reported to its members that a number of Area Chief Fire Officers had revealed they too believed that National Headquarters was not interested in settling an employment contract with the Union at that stage. After the official introduction of CSTs at numerous brigades and the employer’s pursuit of various tactics designed to persuade firefighters of the attractiveness of the CST contract, the Union was informed that the employer was not interested in negotiating directly with the Union as it believed it could influence individuals or groups to agree to deals. This opinion was supported by the Service’s refusal of a Union proposal because it failed to compare favourably with the CST roster.

The Service announced that it intended to eventually have all 2000 professional firefighters rolled into CSTs and the teams working at all stations except those staffed by volunteers by mid-1997. This strategic objective was buttressed by claims of CSTs' emphasis on prevention and education in the community. Thus, it was Service's intention to advance the CST contract as the dominant covenant determining firefighters' terms and conditions of employment. This objective was accentuated by the employer representatives' conviction that at least half of professional firefighters would favour the proposed 37.5-hour roster system and the concept of area-based contracts. The Union rejected this opinion after they agreed to consult with members regarding the employer's offer.

When negotiations resumed after the Union's withdrawal of strike action, the employer's representatives outlined the CST contract and provided their justification as to why they were offering the contract to professional firefighters. In a move that exacerbated the rift between the parties' bargaining positions, the employer's team also put forward their proposal that the structure of negotiations should be altered to facilitate area or district based employment contracts. Centralised negotiations were considered an impediment to the Fire Service's move to decentralise as many functions as possible.

In May the chief executive confirmed that firefighters numbers would be cut by 200 the following month but that no further cuts would be made after that. This highlighted the threat of redundancy and can be viewed as an attempt by the employer to persuade firefighters to agree to the CST contract. The cuts were to take place as the second stage of restructuring was completed on July 1 1996, when additional CST teams would be introduced to more brigades around the country. As a result of this management initiative, 250 community safety team members were employed around the country, thus establishing two groups of employees employed on different terms and unable to work together as a result.

6.2.5 Implementation of Community Safety Teams

Before their implementation, professional firefighters and their Union were vehemently opposed to the introduction of CSTs. However, in an interesting turn of events, after some initial discord, Union members and CSTs developed a degree of unanimity in their conflict with the employer. The Union logged the working hours and activities of CST members and concluded that their work habits differed little from

those of other firefighters. This was despite claims from the employer that CSTs would work longer hours than professionals would. This led the Union to observe that CST members deserved fairness while the employer merely intended to employ them to do the same work as firefighters but for less money. Within a month the Union reported the growing number of CST members who were enquiring about joining or becoming Union members. Some CST members acknowledged that they were hesitant to join the Union following professional firefighters' public opposition to their employment and because they feared victimisation from the employer. The Union committee passed a resolution that no members would staff a position vacated by a CST member who was refusing to attend their enforced volunteer night shifts. This worked to increase the degree of accord between the two groups of employees and strengthened their united front against the employer as both fought for improved terms and conditions. To this end, the Union commenced production of a special Notice to Members directed specifically at its CST members. A key message iterated in these notices was that solidarity of membership meant strength. CST Union membership reached almost 50 per cent by December 1996, and 80 per cent in 1998. However, while the two groups shared a degree of unity in their opinion of management, the friction between them remained. Professional firefighters detested the CSTs for usurping the positions of many professionals who would lose their jobs. They also condemned the training and ability of the CSTs, refusing to acknowledge them as qualified firefighters. Thus, the two groups segregated themselves, unable to work together and unwilling to try.

6.2.6 The State of the Employment Relationship

The results of an Occupational Safety and Health survey of the Fire Service conducted and reported by Blue Lotus Research were released in November 1996. While this study was supposed to focus on safety and health issues, the researchers appeared to feel strongly enough about their findings that they also added their perceptions of employment relations issues. It was concluded that the Fire Service was experiencing disillusioned staff who felt a strong mistrust of their superiors. The report also highlighted that the Service suffered industrial disputes, communication problems between operational staff and management, and divisions between paid and voluntary staff. However, the Fire Service disputed the findings, arguing that such conclusions were beyond the scope of the survey and that the research conducted was insufficient to ensure the validity of those conclusions. The Union asked that these issues not be

ignored merely because the employer found them contentious, and instead asked that employees be allowed to participate in identifying solutions to the observed hazards.

6.2.7 Strategic Choice: Implications of the Implementation of Community Safety Teams

The Fire Service's forcing strategy was founded on attempts to persuade professional firefighters to go onto the CST contract, effectively allowing them to cut firefighters' wages and implement their preferred roster system. The Service used monetary incentives and the threat of redundancy to influence firefighters to consider the CST contract. However, changing to this contract required firefighters to accept volunteer status and agreement in principle to a reduction in staff numbers. Initially the incentive of \$8000 was offered to non-union employees, playing the two groups off against each other. When the Union initiated industrial action on nine counts, the employer announced it would offer the same incentive to Union members, based on their acceptance of the CST contract, when they ceased strike action. Furthermore, the Fire Service also introduced centralisation issues to negotiations by suggesting that contracts would be better developed at the regional area. CSTs were developed within a climate of changing the focus of the Service from response to fire prevention. However, when the Fire Service has referred to the need to alter the Service's focus, it has often been used as justification for substantially altering the employment terms and conditions of firefighters. In a January 1996 press release, the Union stated,

The ability of the employer to recruit cut price firefighters also demonstrates the unfair and unbalanced nature of the Employment Contracts Act. The Act provides all power to an unscrupulous employer. The lack of balance in the Act means that a group of workers like firefighters cannot defend their agreed conditions of employment against an employer who has resources to exploit every advantage the Employment Contracts Act provides.

Hiring an additional group of employees on a different set of terms and conditions could be argued to illustrate an attempt by management to escape the employment relationship, within the constraints upon their ability to actually terminate the employment relationship inherent in the essential nature of the service. Thus, it could be argued that this represents a partial *escape* strategy. However, this is taking place within the context of a forcing strategy, whereby management was able to use the

threat of an escape strategy in an effort to promote the effectiveness of forcing. The employer would be able to continue hiring firefighters on the terms it coveted, as contained in the CST contract, while making redundant those firefighters considered surplus to requirements. In doing so, management attempted to heighten firefighters' anxiety regarding the security of their jobs while simultaneously offering them a sizeable cash payment to sign onto the CST contract. This could be expected to advance management's intention to eventually have all firefighters employed on the CST contract and, in doing so, undermine the Union's strength of the extent of their organisation in the workplace. It could also be predicted that those firefighters who initially changed to the CST contract would be blacklisted by the Union, and that this would impact upon the level of Union membership if management's strategy succeeded and increasing numbers of firefighters became CST members.

In conclusion, it can be argued that the implementation of the Community Safety Teams into the Fire Service workforce took place within a strategy designed to obtain the contractual terms and conditions desired by the employer, and undermine the Union's ability to resist organisational restructuring. This illustrates the transition to an increasingly unrestrained form of forcing tactics, which would be followed by even more severe tactics designed to implement management's objectives.

6.3 Unrestrained Forcing: Disestablishment of the Professional 'Firefighter'

At the end of 1996, the then Minister of Internal Affairs, Peter Dunne, informed the parties that negotiations were to be postponed until the new Government was established. Negotiations did not recommence until May 1997. Until that time, the beginning of 1997 was characterised by substantial political activity on the part of both parties, but particularly the Union, as it lobbied the 'caretaker' Government to act upon the results of its referendum. The eventual coalition of National and New Zealand First caused something of a dilemma for the Fire Service, as these parties held conflicting views on restructuring and the associated job cuts. In light of the fragile characteristics of the new Parliament, the Union lobbied Members of Parliament, outlining their position regarding restructuring and negotiations on employment conditions in an attempt to gain their support and thus place pressure on the new Government. This tactic was promoted by the election of an Alliance Member of Parliament, Grant Gillon,

an ex-firefighter who was willing to promote the Fire Service issue as evidenced by the numerous questions he raised in the House.

This political lobbying on the part of the Union indicates their ongoing attempts to resist restructuring of the Service. Faced with increased forcing tactics from the employer, the Union sought the support of groups and individuals they felt could apply pressure to the government, and ultimately their employer, to halt the restructuring and promote their interests in negotiations.

6.3.1 A Conciliatory Approach to Negotiations: The Calm before the Storm?

In April 1997, the two parties met with the objective of discussing how employment negotiations could be resumed. During these meetings the parties achieved a degree of consensus in identifying the key issues that they believed required resolution. The Union reported to its members the employer's increasingly constructive approach and positive attitude in negotiating meetings. From the Union's communications with members it can be inferred that, in light of this change, they did not persist with their strategy of shaping negative intergroup attitudes. In doing so, the Union indicated that it was also open to taking a more constructive approach. By informing members that the employer was more conciliatory in negotiations, the Union would then be required to justify their actions and tactics if subsequent negotiations failed. The Union is ultimately accountable to its constituents, so if they assumed a hard bargaining stance in negotiations that failed to reach an agreement, they would likely have to explain why, given the employer's improved approach. Therefore, union representatives could be forgiven if they had chosen not to inform members of the employer's more positive approach, as having to justify why subsequent negotiations failed could undermine their organisational unity and their own position as bargaining representative. Unless, of course, they could provide a plausible justification for why they acted as they did in negotiations or why negotiations failed to reach an agreement.

Supporting the improved relationship, the chief executive also agreed to be represented by three General Managers, conceding to the Union's oft-repeated request that the negotiations take place at a higher level of the organisation. This was a move to resolve the Union's complaint that the status of the employer's representatives and their lack of decision-making authority were frustrating the negotiation process. The General Managers authorised to act as representatives had an increased decision-making

mandate and reported directly to the chief executive. This also addressed the Union's concern that their messages were being distorted through communication channels as the representatives from lower levels reported back on negotiations. The Union appreciated the chief executive's changes, stating they believed that higher-level representatives would improve the negotiations process and aid progress.

The employer's team agreed to resume negotiations by considering those issues the parties had defined as of prime importance. The Union suggested the establishment of "boxes" of critical issues in order to organise and progress negotiations. These "boxes" comprised issues relating to the roster, remuneration, rank structure, and employee involvement. The Fire Service asked that first, however, the parties engage in an intensive session to determine if they could agree on a strategic view of the Service for three to five years. This discussion focused on relating to the changing nature of the core business, integrated emergency management initiatives, and the future direction of Government output purchasing. The meeting was not held with the objective of reaching an agreement on these matters, but to establish reference points.

At this point it appeared that the parties were moving beyond their established agenda items to consider the underlying or fundamental elements of those items. The future state of the Service could be considered the prime point of conflict between the parties as it is the impetus behind restructuring efforts. By just considering these issues together, the parties were thinking, at least temporarily, beyond the "fixed pie" of their negotiations agenda.

The past three years of fruitless negotiations in which the Fire Service tried numerous tactics within a forcing strategy to achieve their restructuring had resulted in distrust and cynicism between the parties. However, this episode appeared to be a move toward improving the relationship in order to effect an agreement. It appeared that the break from negotiations for several months, during which the parties worked on developing new offers and proposals for a contract agreement, may have aided this progress. Management had indicated that it was developing a new proposal but that it relied in additional funding and ministerial approval. However, before negotiations could begin the Union outlined conditions that it required the employer to meet to settle a contract. According to these imperatives, the contract needed to compensate for a seven-year wage freeze and for the employer's demand that productive hours be increased. This was matched by the employer's announcement that without further staffing and/or appliance reductions, the Service would not be able to meet its

confirmed budget levels for the 1997/1998 financial year. In a meeting with the Union the employer outlines the predicted cuts needed to achieve savings targets to operate within their budget. Instead, the Union asked management to consider other means of achieving savings targets. However, as labour costs constitute approximately 80 per cent of the Service's expenses, they have traditionally been considered the most suitable area in which to effect cost savings. The Union questioned how the government could justify restricting the Service's budget to \$156 million when it received \$180 million in insurance levies from the public. It was claimed that as much as \$60 million was being held in a surplus account by the government.

Leaked details of a letter to the Minister of Internal Affairs from former Commission chairman Ken Comber, publicised his opinion that the Fire Service would suffer an accelerated rundown if a budget of \$156.2 million was imposed for the following three years. At this point in time the Service's budget has been reduced by approximately \$23 million since April 1993. In order to meet a decreasing budget, the Service had intended to abolish MSM levels and had decided not to negotiate a new contract with the Union, also implying no wage or benefit increases. Comber's statements were used as fodder for the Union's ongoing media campaign opposing both restructuring proposals and the budget cuts underlying the need for such reform. Their argument was predicated on their belief that extensive reductions in firefighters numbers would adversely affect the communities within which they worked, given the reductions already implemented. The Union also focused on Comber's allegation that the Fire Service had decided that no employment contract would be negotiated with the Union, indicating a non-negotiation strategy was imminent.

It was subsequently announced that 131 firefighter positions were to be disestablished, however some of those affected would be deployed to vacancies elsewhere in the Service. Those restructuring plans were postponed, however, when a new Fire Service Commission was appointed at the end of August 1997. The Union was advised that the new commission needed to confirm the staff cuts, but that they were also considering the necessity or appropriateness of the proposals. This announcement also informed the Union that negotiations would be postponed until the new commission had conducted its review.

The Union launched a media offensive to take advantage of the period of uncertainty and the window of opportunity to influence the new commission's decision. This consisted of utilising radio, television and newspaper channels. Union Locals also

organised locally oriented lobbying, including mail drops of information brochures and public meetings. For example, firefighters received the media attention they sought when a fire was set alight in the middle of an Auckland road during a protest. On-duty firefighters had to force their way through a picket line of approximately 80 firefighters to extinguish the fire. The firefighters had made a “bogus” appointment with Jack Elder at his electorate office in Henderson in order to achieve his attention. The firefighters included CST members who joined forces with professionals to protest against the proposed cost-cutting measures.

6.3.2 The New Fire Service Commission

Shortly thereafter, the new Fire Service Commission issued a directive that all contract negotiations would be discontinued until they had developed a strategic framework within which negotiations could be conducted. This decree effectively signalled the end of management’s comparatively constructive approach to resolving critical issues of conflict between the two parties.

Previously the Commission had not involved themselves to a great extent in negotiations. This approach was consistent with the Fire Service Act, which delegated responsibility for managerial and employment matters to the chief executive, thus distinguishing the duties of the Fire Service chief executive and Operating Committee, and the Fire Service Commission. However, the initial approach of the new Commission indicated that they intended to assume a greater role in management of the Service. Roger Estall was appointed as the new chairperson of the Commission. This followed a period as a Commission member in the early 1990s, during which he was asked to resign. Reasons given for this included his incompatibility with other Commission members and his inability to distinguish between the operational role of the executive management team and the strategic role of the Commission. Thus, the Union found it unacceptable that the Commission had directed the chief executive to abstain from contract negotiations when this was clearly beyond the realm of the Commission’s function.

The Need for Restructuring

Almost a month after the new Commission commenced their posts, Estall announced a major restructuring proposal based upon a Review of Management and Non Operational Support Services. The underlying premise was that the Service needed

to strengthen the links between management and frontline operational staff by reducing the levels in the hierarchy between these groups. In summary, this proposal included the disestablishment of the three regional offices and the national office, placing greater emphasis on the chief executive's office. The proposal also instigated examination of offices' work and other support structures to determine the best means of supporting operational work. In order to facilitate this process, the Service was to open up direct reporting channels between operational commands and the chief executive. However, it was the proposed change in strategic direction that constituted the most significant aspect of the reforms. Restructuring over the past few years had emphasised a perceived need for the Service to expand its role in the community, as evident in the introduction of the community safety teams and their involvement in fire safety education and prevention programs. Under a government review of emergency services, the Fire Service had aligned its strategic direction with a perceived need for the integration of emergency services and civil defence. However, Estall and the Commission shaped the Service's future direction on their recommendation that it focus on the core service of fire prevention and extinguishment.

While this proposal to streamline management received the support of firefighters, it prompted the resignations of four senior executives. The chief executive, National Commander, and Northern and Southern Region General Managers all resigned, stating they disagreed with the disestablishment of the regional offices and other recommendations. They also claimed that the Commission had not consulted them over what constituted major organisational restructuring. In a media statement made in September 1997, David Allen, general manager of the Northern Region, stated the "Commission's new strategic direction has been fast-tracked in complete isolation from myself and others (in particular the National Commander), whom I believe should have been involved." The resigning executives believed that significant progress had been made towards the reforms that were currently taking place, with a lot of effort and hard work on the part of all Fire Service employees including frontline firefighters. While frontline firefighters generally supported moves to reduce levels in what they considered a top-heavy hierarchy, they were also concerned that the means of doing so were not approved by senior management, who had gone so far as to resign rather than work within the new regime.

The Fire Service Commission's strategic proposals, which were commonly linked directly to chairperson Roger Estall, incited public debate about the need for

further reform, or restructuring of the reforms that had already taken place. An editorial by Peter Dunne, leader of the United NZ party, concluded that the furore raised three questions. These pertained to the role of the Fire Service, if it was achieving that role, and if so, what was the force behind the latest proposals for change.

Conflict of Interest

Allegations of a conflict of interest for Mr Estall in his position as chair of the Commission intertwined with the ongoing conflict within the employment relationship. In changing the strategic direction of the Service back to its “core business,” Estall was accused of promoting the interests of the insurance industry in which he used to work and was retained as a risk management consultant. His position on Standards NZ committees providing regulations for sprinkler systems was perceived to conflict with his influence as Fire Service Commission Chairperson. Furthermore, Estall was appointed after a recommendation from the Business Roundtable, provoking comments that the new Commission was operating to a hidden agenda (Gillon, 1998). This was emphasised by Estall’s history of contributing to and compiling reports suggesting methods for improving the efficiency of the Fire Service. For example, a 1995 Business Roundtable paper, to which Estall was a contributor, lobbied for the Fire Service to be restructured and efficiency savings to be made in order to reduce the cost of insurance levies to large businesses.

Prior to Estall’s appointment, the Government had announced its intention to pass on any savings made through changes to the Fire Service to homeowners and businesses in the form of reduced insurance levies. This was put into effect in December 1997, when the Government reduced the levy from 6.2 cents to 4.5 cents per \$100 of insured value. The Government also abolished its annual grant to the Fire Service of approximately \$9.5 million, stating that the historical reasons for providing the grant were no longer relevant. The Government traditionally compensated for its share of fire services through the grant rather than paying insurance, however, state sector reforms resulted in crown entities paying their own fire levies. Together these cuts amounted to a funding reduction of approximately \$48 million. It was suggested that the Fire Service could make up for the short fall by using some of the funds in reserve, however a long-term alternative was not disclosed. It was argued that the extent of the reserve or surplus account indicated that the fire levy was too high, rather than that the Fire Service was not receiving enough of the levy collected.

The levy reduction and substantial reform proposals led many to conclude that Estall's appointment was of a political nature and that he was employed for a specific purpose on the recommendation of the Business Roundtable. In his book on the Fire Service, Grant Gillon included correspondence from Roger Kerr, Executive Director of the Business Roundtable to the incumbent Minister of Internal Affairs, Jack Elder. The letter acknowledged the Business Roundtable's interest in the provision and funding of fire services and stated that they felt that Roger Estall would bring a "fresh perspective to the Fire Service issues" (Gillon, 1998; P.36). In an investigation involving the Serious Fraud Office and the Crown Law Office, among others, Marsh and McLennan, the insurance brokering firm of which Estall was both a director and a shareholder, was accused of identifying schemes for its clients to substantially reduce their levy payment by lowering the indemnity value declared on insured property (Gillon, 1998).

Estall did not sever his ties with Marsh and McLennan or the insurance industry on his appointment to the Commission. He retained his share holding and also had the right to return to the board of Marsh and McLennan after his term on the Fire Service Commission. Many perceived this to be a fundamental conflict of interest, claiming that his ties to the insurance industry would influence his restructuring proposals. However, Estall was also Chair of the Standards NZ Fire Suppression Systems committee that is responsible for the standardisation of fire suppression systems in buildings, primarily sprinkler systems and riser mains. This position was argued to conflict with his position on the Fire Service Commission, an argument possibly supported by the Commission's consideration of discounting fire levies on buildings with fire sprinkler systems installed. Furthermore, Estall was noted as supervising the installation of a sprinkler system at a complex of a large New Zealand corporation.

According to Gillon (1998, 33), "as chair of the Fire Service agreeing to the discount, then setting the standards for sprinkler systems which allow for a discounted Fire Service levy, and then as a contractor for an insurance brokering firm supervising the installation and approving the very same systems" equated to a conflict of interest. The former chief executive Maurie Cummings and Grant Gillon, who helped initiate the committee's inquiry, presented their view to a Select Committee that the change in direction of the Fire Service may have been more to do with reducing the cost of the Fire Service to businesses than reducing the consequences of fires (Gillon, 1998).

In response to these allegations, Estall agreed to remove himself from any situations in which a conflict of interest could be perceived. For example, he would

leave a Commission meeting when issues pertaining to sprinkler systems and levies were discussed. It was also determined that he would refrain from working for Marsh and McLennan, or any other insurers or brokers, during his term on the Commission, for which he allegedly received a \$40,000 pay increase in compensation.

The media noted the Estall was quick to “burn his bridges” in his pursuit of change. Within months of his appointment he disregarded a recent five-year strategic plan in favour of proposals that contrasted fundamentally with the previous plan. Estall also dismissed the resignations of four senior executives as “irrelevant,” stating there were a number of people with expertise remaining within the organisation. The new proposals also threatened the positions of middle management through their edicts to delay the management hierarchy and had a profound effect on firefighters’ perceptions of job security and morale.

6.3.3 The Fire Service Strategy: ‘The Way Forward’

The Fire Service Commission released a second set of proposals in May 1998 in a document titled ‘The Way Forward.’ This modernisation process constituted a complete change in organisational focus. In short, the proposals included a change in emphasis from the response role of firefighters, which Estall judged as a strategy that had been pursued “at the expense of preventing fires in the first instance or encouraging the use of better forms of managing incidents.” Along with emphasised education and prevention promotions, the restructuring process aimed to improve response to fires, reducing fatalities and property damage. Both objectives would be supported by increased expenditure on research to understand the behaviour of fire in New Zealand buildings and the behaviour of people when confronted by fire. The new strategy was to be complemented by increased support for volunteers and more investment in the Service’s assets to achieve better located and modernised fire stations housing with newer fire appliances. A temporary budget increase to \$165.6 million for the 1997/1998 financial year was granted to fund the restructuring process.

However, the most controversial aspect of the modernisation process pertained to the plans for changes to working patterns and employees. ‘The Way Forward’ ascertained that all professional firefighter positions should be disestablished and replaced with the new fire officer role. By doing so, the skills of the workforce would be increased, whereby a broader range of skills was intended to increase productivity. Thus, the 1575 remaining professional firefighters’ jobs were disestablished and would

be replaced by up to 400 fewer fire officers. Existing firefighters were invited to apply for the new positions, as were volunteer firefighters and other interested parties. In cases where applicants of equal calibre applied, preference would be given to existing professional and volunteer firefighters. The modernisation brochure outlined three new sets of working patterns, the implementation of which were to be determined by the availability of volunteer firefighters in each brigade, the nature of the risk, and the “opportunities for interaction with the community.”

The new employment arrangements were designed to reflect the new role and duties, and the “very different skill sets” required of the fire officer. Employees would no longer be paid on an hourly basis or be required to work “excessive overtime.” Some of the new working patterns included a move to a 56-hour roster or a combination of 42- and 56-hour rosters, with volunteer fire officers to be used in evening and weekend shifts where possible. Significantly, the positions of CST members were also to be disestablished as the Fire Service decided it no longer wanted conflicting terms and conditions amongst its frontline personnel. Existing firefighters who did not apply or who were unsuccessful would be treated fairly, with redundancy payments to be negotiated with the Union. However, redundancy for unsuccessful applicants was later stated as a non-negotiable offer of the basic minimum redundancy provision, which are not, however, provided in the employment contract. This equated to four weeks base pay for the first year of service followed by two weeks base pay for each subsequent complete year of service up to a maximum of 42 weeks salary, or 20 years of service.

Roger Estall argued in a media release that it was wrong to say that firefighters were being sacked, but rather that “the consultation process was proactive and wide.” Estall was also quoted as saying, “the last thing we want is for our staff to feel unwanted. We want to invest in them substantially” (Stevens, 1998: 5). Because there would be fewer jobs available after the modernisation process, it was decided that the only fair and equitable way to determine who should remain a Fire Service employee and who should be made redundant was to ask everybody to reapply. Thus, the process of disestablishing all positions was defended and justified by the Fire Service Commission:

The only fair way to effect change of this nature is to advertise all new positions. The Commission must go down that track because the Fire Service Act as well as the State Sector Act requires us to appoint the

best person for the job. There will be a proper and robust selection process with appropriate review provisions.

The modernisation process also intended to enhance the flexibility of the Service, where some appliance crews would be reduced from four to three firefighters. This allowed chief fire officers greater latitude in determining the most appropriate number of firefighters to send to incidents of varied danger. Where more than three firefighters were required, a second appliance would join the first responding appliance. The existing standards of response were revoked with plans to replace them with new Emergency Response Guidelines and accompanied by new brigade rules and agreements for service. The concept of flexibility was to be further enhanced by negotiating collective employment contracts on a regional basis to reflect regional needs.

According to the timeline set out in The Way Forward (see Figure 6.1), the Commission allowed a three week consultation period with stakeholders before commencing its plan to disestablish its professional firefighter positions and seek expressions of interest in the new fire officer positions. The Commission reported that it was confident that no aspect of their modernisation proposal was illegal or breached existing employment contracts, including the individual contracts based on the expired collective employment contract.

Commencement of consultation with stakeholders	7 May 1998
Consultation concludes	28 May 1998
Commission announces finalised employment arrangements and any other details following a review of the outcomes of consultation	4 June 1998
Commission invites expressions of interest in the new positions from internal and external applicants	4 June 1998
Applications close for expressions of interest	19 June 1998
Assessment of applicants commences (assessment includes review against competencies, physical testing and security screening)	22 June 1998
Appointment of successful applicants and advice to unsuccessful applicants	1 July 1998

Figure 6.1. A timeline of the intended sequence of events (The Way Forward, May 7 1998: 22)

The modernisation document sought the support of firefighters in assisting the implementation of these radical proposals. According to Roger Estall in his introduction to 'The Way Forward:'

Change is never easy but it is an essential part of progress. Apart from it being our legal duty to achieve the reduction in the number and consequences of fire that will result from the modernisation of New Zealand's Fire Service, the benefits will be seen directly in terms of reduced misery, suffering and loss. Accordingly, the Commission looks forward to your support as it embarks on this process to change.

6.3.4 Union Strategy: A Critique and Retaliation

The Union's critique

The shock of learning that all firefighters had effectively lost their jobs overwhelmed any support firefighters may have had for the modernisation process. It was discovered that while firefighters and their Union were being informed of the changes, the Fire Service had almost simultaneously held a press conference to release details of the proposals to the public. Thus, due to the nature of the shift systems worked by firefighters, some found out that they had effectively lost their jobs after watching television news programs. The Service had made an effort to inform both the day shifts and the incoming shift at the 6 o'clock changeover in the evening, however those firefighters who were on a rostered day off were left out of the communication channels.

Firefighters and other observers argued that the new fire officer role was not significantly different from existing firefighter positions. In a subsequent media release Roger Estall admitted that the existing workforce did possess the skills required of the new fire officer role, but that firefighters were not utilising the full range of their skills. This would appear to confirm the view that there was little difference between the new and proposed roles in terms of the skills possessed by the workforce.

Media commentators noted that the ongoing process of public sector reform most likely dulled public response to the proposals. While some of the proposals seemed to make sense, such as increasing expenditure on upgrading equipment and research into behaviour, others did not convince the public. The intention to

disestablish all frontline firefighter positions and replace them with fire officers seemed a particularly drastic and unnecessary activity. There was also substantial debate over the move to reduce some appliance crews to four, with the Firefighters' Union issuing media statements to the effect that to implement such changes would adversely affect public safety. Several reviews conducted within the Service had established that a minimum of a four-person crew was needed on a standard fire engine for the safest and most effective operation. The present commission, however, argued that safety had nothing to do with crew size, but rather the way that firefighters did their job. However, the Union stated that firefighters were unlikely to fight fires for the public's sake when they did not have the number of colleagues they required to back them up. Firefighters also doubted plans emphasising the need for the public to look after themselves and argued that education about fire safety and prevention may not be as effective as expected. According to firefighters, those who listen are already aware of fire prevention methods, and those who do not listen, never will. It was commented that the Commission had based their restructuring plans on an ideal world, where if people could protect themselves against fire firefighters would not be needed and the Service could reduce expenditure on labour costs. A United Nations fire consultant based in New Zealand, Russell Postlewaigh, stated that the Service was breaking international trends with its intention to implement crews of three and that countries that had trialled three-person crews had done so to reduce expenses.

The commission accused the Union of misrepresenting the proposed changes to the media. It refuted the impression disseminated through the media that all appliance crews would have their crews reduced to three. Only some appliances would have their crews reduced and there would be clear guidelines to determine the minimum number of firefighters required for particular incidents. For example, a provincial brigade would retain a crew of four, as it would not have access to the quick support of additional crew and appliances. The Union expressed concerns that in other areas, only one appliance with a crew of three would first respond to an incident, with backup called if required. This meant that the initial responding crew could not enter a building until a further crew had arrived. However, it was also stated that volunteers would retain the right to determine the crew size. It appeared that the success of the modernisation process depended significantly upon the role and participation of volunteers. Gillon (19988) provides an international comparison of firefighter numbers:

Country	No. of Firefighters	Total Population	Firefighters / 1000 population
U.S.A 1993 (Statistical Abstract of the US 1996)	330,000	258,140,000	1.28
Japan 1993 (Japan Statistical Yearbook 1996)	141,403	124,607,000	1.13
England 1996 (Annual Abstract of Statistics 1998 U.K)	9,300	49,089,000	0.80
Wales (as above)	2,200	2,921,000	0.75
Scotland (as above)	5,300	5,128,000	1.03

8(Compiled by David Williams, Parliamentary Library, 11 May 1998; cited in Gillon, 1998: 127)

Implementation of the Commission's proposals would result in a ratio of 0.44 firefighters per 1000 of the population.

The Union's Strategy

The Union's first response to the modernisation proposals was one of shock. Initially, Union officials warned their constituent members not to do anything until they had calmed down somewhat and the situation had been analysed. Within days the Union had decided that members should not apply for the news positions. Information packs including application forms were sent by courier to individual firefighters' homes. However, when collected by local Union representatives and returned to the Union's central office, the packs were generally found to be unopened. At this stage more than any other time during the dispute, the Union's strategy highlighted the importance of managing internal differences. According to the Union's president, Mike McEnaney, it was relatively easy for firefighters to stay united and focused on a particular course of action given the increasingly oppressive behaviour of the employer and the consequences of the proposals that firefighters predicted for public safety. Any

firefighters who may have been tempted out of fear and anxiety over the possibility of losing their jobs, were dissuaded when they realised that the Union could easily discover if any members applied for the positions by checking the names on the returned information packs.

The predicted consequences of such a strategy were that when the deadline for receiving applications arrived, the Service would only have those received from volunteers and other members of the public, and none from the professionally trained workforce of almost 1600. One source of bargaining power for employees is their market skills, or those relating to particular craft or technical skills (Marginson, 1993). While in this case it may not bring into effect the alternative job opportunities that theory often associates with these skills, it does, however, give firefighters the option of withholding those skills. It is difficult to imagine that the Service would have received enough applications from other interested parties to continue providing the required level of service after the professional positions were disestablished. Furthermore, even if sufficient applications were received to staff brigades, it is likely that many of those applicants would first need to undergo training, which had recently constituted a 13 week course for new CST recruits. The specific way in which craft or technical skills equate to a source of bargaining power comes from the fact that such skills are relatively scarce, and are expensive and time-consuming to develop (Marginson, 1993). Thus the Union's strategy appeared to be a highly effective means of circumventing the employer's plan.

The Union utilised the efficient communication channels and processes already established by its practice of sending notices to members. These became more frequent and imperative as the Union reminded its members that to succeed in overturning the Commission's plans, members needed to stay united and not apply for the new positions or for voluntary redundancy. Firefighters were warned that applying for voluntary redundancy would become an irrevocable decision, as in the past the Fire Service had refused to allow firefighters to withdraw such applications, and that in any case they would be eligible for redundancy payments if they did not retain their jobs. Firefighters were also informed that the Service was offering three contracts with distinct roster systems, each with their applicable terms and conditions of employment. The Union warned members that if they did apply for a position and were successful, there would not know until that stage which contract they would be offered, which roster system they would be required to work, and where they might be based. If these terms were not

acceptable to the successful applicants, it was predicted that the Fire Service would argue they were not eligible for redundancy.

The pursuit of this strategy was supported by advice from the Union's lawyer, who suggested that to apply for the new positions would indicate firefighters' acceptance of the disestablishment of their jobs and would effectively grant the Commission permission to proceed. The Union planned to commence legal proceedings on a number of counts, including breach of contract, as soon as the Commission confirmed implementation of the proposals. A further Union strategy was evident in their eventual refusal to participate in the Commission's consultation process. The Union spent much of the three week period allowed for consultation requesting information that it felt was necessary to develop a submission, for example, the new Emergency Response Guidelines. However, the Commission could or would not provide this information. The Union eventually labelled the consultation process a "sham," whereby they believed the Fire Service would receive submissions and go through the motions of consultation but subsequently act unilaterally to implement the proposals it desired. According to advice from the Union's lawyer, Sandra Moran, in May 1998:

The commission has set out a process which is designed to give the appearance of being a consultative process when it is not, and to given the appearance of having jobs available for those who are suitably qualified to apply when no such jobs have been formulated or announced. As soon as the Commission gets applications for these phantom jobs, it will then be in a position to dismiss those who have applied but who it does not want. In that way, the Commission can both reduce the numbers and change the terms and conditions of employment. It will be a case of "you can have a job but only on our terms" and then, only for those the Commission wants.

Therefore, the Union interpreted the Commission's actions as an attempt to divide the Union by making its members believe they could not risk not applying for the new jobs. Subsequently, Union membership would be divided as firefighters compete against each other for limited positions and inadvertently accept the proposals out of fear of losing their jobs.

On June 11, 1998, the Union commenced the first stage of legal action against the Commission. This consisted of lodging a Dispute of Right with the new chief executive, Jean Martin, concerning Establishment, Minimum Shift Manning (MSM), and the obligation on the employer to consult with employees, as per the clauses in the employment contract. Pursuant to the Peace clause 9(h) in the contract, the employer is

required to ensure maintenance of the circumstances that prevailed in each brigade prior to the matter becoming the subject of a dispute. Thus, according to this clause, the employer was obliged to maintain the status quo until the dispute was resolved.

Fire Service Commission Concessions

After receiving submissions during its consultation with stakeholders, the Commission announced that it had received support for the proposed change from a reactive to a proactive focus on prevention and preparation. However, the period of consultation also resulted in the Commission revoking its proposal to sack its entire professional workforce. Instead, firefighters would be subjected to an assessment process to determine their suitability for the modified role. This process would include firefighters engaging in self-assessment of their own capabilities. Redundancy remained an alternative for those who no longer wished to work for the Fire Service. However, as with the previous proposal, a position would not be automatically offered at the end of the assessment process. Thus, the new plan appeared to differ little in its underlying intent than the original proposal. The intention to select only those considered suitable for the modernised Service remained a fundamental feature of the modernisation process. The Union's lawyers supported this interpretation, stating that the proposals were essentially the same and remained seriously flawed. Union members were again reminded not to apply for the new positions or undergo assessment procedures.

Other changes resulting from consultation submissions included revision of the implementation of the 3-person crews on fire appliances. Under original proposals half of the 74 professionally crewed appliances were to have their crews reduced, but revisions meant that the ratio of four-person crews to three-person crews would be approximately 4:3. Implementation of three-person crews was expected to establish a track record before further appliances had their crews reduced. The Commission also planned to establish a review unit to monitor the effectiveness of frontline operations, including the impact of changes to crew size.

6.3.5 The Employment Court Case

On July 2, 1998, the Union's lawyers filed papers in the Employment Court seeking injunctions against the Commission's intentions to reduce the number of firefighters it employs and to make firefighter reapply for their jobs. The Employment Court action related to the following causes of action:

1. Breach of Contract – Expired Contract members, Failure to consult pursuant to Clauses 1.4.10 and 1.4.16 of the contract – M.S.M. and Establishment levels.
2. Breach of Contract – CSTs, Failure to consult pursuant to Clause 22.1 of the Collective Employment Contract.
3. Breach of Contract – Expired Contract members, Failure to honour Clause 9 of the contract – Peace Clause.
4. Personal Grievances – All members.
5. Unlawful Lockout – All members.
6. Breach of Freedom of Association - Failure to allow collective bargaining.
7. Breach of Freedom of Association – Compelling members to accept unilaterally determined conditions of employment.
8. Action under the Bill of Rights.
9. Failure to act as a good employer.
10. Failure to recognise the authority of the bargaining agent.

The hearing for the Union's application for an injunction was due to proceed on July 9, 1998, however after almost four hours of talks the Union accepted the Commission's offer to enter mediation. This development led to the postponement of court proceedings until the outcome of mediation was known. The Fire Service agreed to continue to accept self-assessments and applications for voluntary severance from firefighters until three working days after the end of mediation talks. It was also agreed that those employees who had already submitted voluntary severance applications would receive the opportunity to affirm or withdraw their applications in light of the mediation talks. The mediation talks were to take place on a "no prejudice" basis, where nothing said in the talks could be used against either party in court and that all mediation discussions were strictly confidential. However, on July 29, the parties agreed that further mediation would not enable them to resolve those issues remaining unresolved within the time frame available. Thus, while the parties reported making progress, mediation talks were cancelled and substantive hearings regarding the Union's injunction application resumed. The parties also agreed to refrain from making media statements until a ruling was delivered by the Employment Court. It was also agreed that the Commission would not force any involuntary redundancies or disestablish any existing positions until the ruling was received.

The Employment Court proceedings were postponed once more during the course of events as developments between the parties led them to resume direct discussions pertaining to matters that were before the Court. The legal proceedings were not withdrawn, however, as the parties attempted once more to reach consensus among themselves. In a conciliatory move by the Commission, these discussions involved members of the Commission and the senior management team.

The Union's Submissions

Submissions put forward by the Union's lawyer were based on their concern regarding the composition of the new Fire Service Commission appointed in 1997. These concerns were based primarily on issues raised when Roger Estall was previously appointed to the Commission and the strong views he espoused when in that position. This fuelled firefighters' apprehension that his role as Chair of the Commission would allow him the influence to implement these proposals to the detriment of both firefighters and the public. The proposals contained within 'The Way Forward' implied that the approach of the Fire Service to date had not been successful and that a clean slate was required to approach modernisation of the Service. The speed with which the new proposals were to be implemented led the Union's lawyers to label it a "blitzkrieg" technique of management and it was argued to require substantial planning in total secrecy to effect such a technique. The Union's lawyers stated that "most effective of all is the *fait accompli* – the presentation of the proposal without warning within a short time frame for consultation so as to preclude effective opposition being mounted." It was argued that this technique was utilised to overcome the Union and its solidarity, which had formed an impediment to the accomplishment of the employment terms and conditions that the Fire Service Commission desired. It was a strategy intended to circumvent the law and the rights of workers to negotiate changes in their employment terms.

The Union's submission also argued that the work the new employees would be required to undertake was essentially the same as that of the old workforce. It was pointed out that never before had an entire workforce been sacked even though the enterprise was to continue. Mass redundancies were also considered illegal, where the Commission instead needed to demonstrate which positions were surplus to requirements and for what reasons. Furthermore, as the collective contract for CST members was still in force, it argued that the disestablishment of their positions

breached that contract and constituted an unlawful lockout. Even though the collective contract for other firefighters had expired, they also claimed that the Service's actions constituted an unlawful lockout, based on the argument that the Commission's actions demonstrated hard and oppressive behaviour, undue influence, and duress. The Commission's actions were also said to demonstrate a denial of firefighters' right to bargaining collectively. Thus, the Union also included causes of action relating to the "good employer" clauses of the State Sector Act, which the Commission was accused of breaching.

Fire Service Commission Submissions

The Commission emphasised that the modernisation plan was an attempt to reduce the incidence of fires, and fatalities and property damage as a consequence of fire. This was in line with an increasingly proactive approach to the prevention and reduction in the incidence of fires. The best means of reducing the number of fire incidents was to prevent them from occurring in the first instance, hence the increase focus on smoke alarms, sprinkler systems and extinguishers. According to Derek Broadmore, the Commission's lawyer, there were three issues before the Employment Court: (1) whether the commission was required by its employment contract to consult its employees and the Union about its restructuring plans; (2) whether the consultation process carried out by the commission addressed those contractual requirements; and (3) whether the new Fire Officer roles were substantially different from that of the existing professional firefighters and whether the proposed changing to working terms and patterns were justified in restructuring the Service. According to Broadmore, the Service claimed a history of attempts to negotiate a more flexible and productive employment contract but had consistently met with resistance from the Firefighters' Union. Following these remarks, however, it was stated that the Commission had not stated that existing firefighters did not have the skills of the Fire Officer, but that they were not exercising the full range of skills required of the new Fire Officer role.

In an interesting development, the Commission's deputy chair, Doug Martin, admitted under cross-examination that the Commission had acted against advice from its management team to negotiate the modernisation changes with the Union. The alternative, but not preferred, option presented by the management team was unilateral implementation of restructuring. Because of a perceived resistance to change on the part of firefighters and the ongoing impasse in negotiations, the Commission chose to

unilaterally restructure the Service while undertaking a consultation process with the Union and other stakeholders to ensure their viewpoints were taken into account. This decision was made during a period in which the Fire Service had postponed negotiations with the Union until it had a clearer picture of the need for and path to organisational reform. However, the Union subsequently chose to repudiate the consultation process, describing it as a “sham” and a superficial effort undermined by the Service’s intentions to act unilaterally regardless of consultation outcomes. The Commission asserted its statutory right to restructure and argued that they had demonstrated a willingness to consult with the Union over the modernisation proposals. Current employment law had resolved that it was the right of the employer to decide how it wished to operate its business, the strategy to be chosen in doing so and also to determine the number of employees it required. It was also argued that the Commission was not required by legislation or “good employer” principles to provide all information justifying restructuring to the Union.

Employment Court Ruling

On October 15 1998, Chief Judge Goddard of the Employment Court ruled in favour of the Union by granting an injunction preventing the Fire Service Commission from disestablishing all professional firefighter positions. The two plaintiffs in the Union’s case were Jeffrey McCulloch, representing professional firefighters who were Union members employed by the defendant, the Fire Service Commission, while the second plaintiff, David Jowett, represented CST employees who were also members of the Union. The Court heard 14 days of evidence from 34 witnesses and two days of submissions presented by the counsels of the parties. Furthermore, a large quantity of documentary evidence was provided to the Court, in addition to videotape of a consultation meeting. The Chief Judge deemed much of the evidence unhelpful and irrelevant, questioning why the mediation process had not narrowed the factual evidence. The Court noted the contentious nature of the employment relationship between the two parties, as illustrated by the ongoing impasse in negotiations and the bitter litigation that had taken place in the past. It was also observed that the parties had adopted a more constructive attitude to contract negotiations until the defendant, following the appointment of the new Commission, suddenly withdrew from further negotiations and rebuffed Union attempts to effect a resumption of meetings. The Chief Judge summarised “The Way Forward” as suggesting that the Fire Service had, until

then, failed in its statutory duty to focus primarily on fire safety by instead concentrating on response efforts and attempted to enlist the support of its professional firefighters to educate and enlighten the public. The Commission was criticised for its brief period of public consultation and almost simultaneous release of proposal announcements to the media. However, it was stated that the Union's failure to participate in the consultation process was "fatal to their complaint."

The Court ruled that "the defendant did not comport itself as a fair and reasonable employer, let alone as a good or ethical one," and that "in the end, the defendant is shown to be an employer who was willing to deliberately breach its employment contract obligations." The Service's actions were deemed to constitute a threatened employer lockout, where "the aim of the defendant is to induce its employees or most of them to work for it on completely different terms." Implementation of the proposals would also have resulted in unjustifiable dismissals. In light of these events, the Chief Judge (October 15 1998; WEC 74/98) ordered:

1. That a permanent injunction issue restraining the defendant, acting pursuant to the scheme or plan of action that it adopted on or about 26 June 1998, from:
 - (i) disestablishing the totality of positions occupied by staff of the defendant represented by the plaintiff and
 - (ii) creating the positions, comparable to existing positions of fire officer and senior fire officer, without first offering such positions to the staff of the defendant represented by the plaintiff but nothing in the forgoing order shall be construed to prevent the defendant from disestablishing identified positions surplus to requirements and selecting by a fair process the persons to be made redundant.
2. Leave is reserved to the second plaintiffs to apply on notice in relations to consultation concerning redeployment options.
3. Costs and damages are reserved for further consideration.

In conclusion, the Employment Court ruled against the Fire Service Commission on the issues of the similarity of new and existing positions, threatened unlawful lockout and unjustifiable dismissal, and also on good employer issues. The Employment Court ruled for the commission and against the Union on issues of consultation and freedom of association. The Fire Service was ordered to pay the Union almost \$187,000 in compensation for legal fees and witness costs.

Implications

In his ruling, Chief Judge Goddard identified three alternative courses of action available to the Fire Service. These were requiring staff to upskill, negotiating with employee representatives, and making genuine redundancies. It was held that the

Commission could not disestablish all firefighter positions and make genuine redundancies as there was still the need for firefighters to fight fires and promote fire safety and education. The Fire Service Commission, however, interpreted the Employment Court ruling as a positive affirmation of the planned modernisation programme and that clear guidelines had been delineated for progress in restructuring. According to a media statement issued by chief executive Jean Martin on October 15, “one of the most critical judgements is that we should continue to adopt a fair process particularly with respect to moving to required staffing levels.” The ruling also indicated that the Union needed to be more flexible in relation to their work patterns and would likely have to adapt their work practices. Thus, from the Fire Service’s perspective, the ruling enabled the implementation of a modernisation process, albeit by slightly different means of removing staff who were surplus to requirements.

Legal documents disclosed by the Fire Service under court order and produced as evidence indicated that the Service had sought legal advice before announcing their plans. While the nature of this advice is unknown, the Union’s lawyer, Sandra Moran, stated that their actions in seeking advice had determined the legality of their actions before proceedings were filed. According to Ms Moran, the code of conduct that applies to employees whereby they are dismissed when their behaviour is out of order should also apply to commissioners, particularly considering their positions as public servants representing the public. After the court ruling, it was also revealed that a reason for former chief executive Maurie Cummings’ resignation was because he doubted the legality of Roger Estall’s plans. Cummings also expressed his concern that little research had been conducted to determine if the Service could operate as effectively with 300 or 400 fewer staff, and that he did not believe it could.

This opinion reflected that of the Firefighters’ Union, which stated that it was not adverse to changing with the times, but demonstrated sound resistance to certain modernisation proposals that they believed would have an adverse affect on firefighter and public safety. Thus, an implication of the ruling is that an employer cannot unilaterally impose its plans for change upon the workforce because they believe that such changes could not be successfully negotiated.

Possible implications of the ruling for collective bargaining practices was that it could have signalled the end of mass dismissal as a bargaining threat. According to an industrial relations specialist, Gordon Webley, the tactic of mass sackings had restricted by the Court’s ruling and also issued a message to employers and employees that they

should engage in negotiations rather than trying to use force to achieve their ends (Wakefield, 1998). Current employment legislation had resulted in minimal external intervention or influence and it was noted that employers had been testing the boundaries of acceptable behaviour.

The action taken by the Fire Service Commission was likened to that of the Australian Patrick Stevedoring company during their industrial dispute with waterfront workers also in 1998. That dispute was also seen as the culmination of a history of attempts by both employers and the state to break the unionism of Australian waterfront workers (Wiseman, 1998). In April 1998, Patrick sacked its entire stevedore workforce of 1400. With the accompaniment of guards with dogs guarding the docks, Patrick proceeded to replace the stevedores by contracting non-union workers. The Australian government supported the move to break the Union's power over the waterfront, similar to the New Zealand government's lack of intervention in the Fire Service's industrial strategy. Both disputes have been recognised as evidence of a new era of industrial relations. However, while the New Zealand Fire Service implemented mass dismissals in order to impose its own terms and conditions on a significantly reduced workforce, the Patrick Stevedoring company did so to replace its entire workforce with non-union workers. The support of Australia's Labour Government for this industrial strategy represents an attempt to reduce the strength of unionism in the country's workforce in order to maintain international competitiveness through reducing costs and increasing productivity. Thus, the Government was essentially seeking the same ends as the New Zealand National Government when it implemented the Employment Contracts Act in 1991. The balance of power in the employment relationship has swung in favour of the employer's prerogative in managing their business and employee relations as they see fit.

As with firefighters, the Stevedores' Union, the Maritime Union of Australia, indicated it was willing to help implement productivity improvements, but stated that such improvements could be achieved just as well through other means than by mass dismissals (Wiseman, 1998). The New Zealand media pointed out that 90 per cent of the skills of the new fire officer were already being practised by existing firefighters despite the Service's attempts to treat fire prevention and education campaigns as a new activity in which firefighters have not previously been involved. It was questioned why, when firefighters already possessed these skills, did the public have to pay for new staff. It was also questioned how the sacking of CSTs could also be justified, when the new

working patterns closely resembled those already worked by CST members. The Trade Union Federation of New Zealand argued that a worker could not be sacked while the position in which they were substantially employed remained available and they were performing satisfactorily in that position. If the Firefighters' Union had suffered a decline in public opinion after the expense of the citizens' initiated referendum in 1995, the actions of the Fire Service in effectively sacking all firefighters worked to restore that support. Prior to the court proceedings, a national 'mobilisation' day was organised by approximately 20 trade unions in support of firefighters. Trade unions and workers viewed the commission's actions as an attempt to overthrow the collective bargaining process with no consideration for public safety. The Commission's actions were also seen to be leading the way down a new path of industrial relations, setting a precedent for other employers to use such tactics. Thus, the significance of the Fire Service dispute was increased for other groups of workers who then lent their support to firefighters. Public marches and political processes were held simultaneously in Dunedin, Christchurch, Wellington, and Auckland, where firefighters were joined by thousands of supporters in expressing their disagreement with proposed reforms. A petition started in Christchurch stating the changes were unacceptable received almost 7000 signatures by May 13, 1998. The Firefighters' Union also received a substantial financial donation from the New South Wales Fire Brigade Employees Union, who identified the similarities with their own employment relations. In 1997 it had been rumoured that plans were being developed to dismiss all 2000 Melbourne firefighters, of whom 100 per cent were union members. Thus, Australian firefighters were called upon to support their New Zealand counterpart because it was believed that if the proposals were successfully implemented in New Zealand, they could suffer the same fate.

The Government introduced employment legislation that, while focusing on the interests of employers, protected the rights of employees through freedom of association and grievances clauses. However, this same Government appeared to condone, through its lack of intervention, the strategy of one of its own entities to override the rights of employees to negotiate their terms of employment. The Fire Service did not admit that the selection criteria for recruiting the new fire officers would be influenced by whether applicants were union workers or not. This may not have been a prime consideration as the plan to disestablish all positions enabled the employer to effectively dictate terms and conditions and so union presence in the new workforce may not have had any

substantial impact. The proposals also referred to the necessity to develop employment contracts on a regional basis, which implies the ongoing presence of the Union as the representative of the firefighter collective. This decentralisation of negotiations, however, would work to undermine the unity and strength of the national Union, tempering the need to eliminate the Union's presence altogether. The Fire Service may have recognised that attempts to deunionise the workforce were unlikely to be successful given the essential nature of the service and public opinion of firefighters, and that there are advantages to negotiating with a representative of such a large and geographically diverse workforce.

There were also significant political implications resulting from the Service's proposals. The then Minister of Internal Affairs, Jack Elder, was a member of the coalition partner New Zealand First. While other members of his party expressed concern at the severity of the commission's plans, Elder supported the commission. The issue of the Fire Service then developed into a political saga that highlighted divisions within the coalition government and within NZ First. The Service's restructuring was compared to similar reform, considered unsuccessful by many, in the health and education sectors, appearing to increase the public's dissatisfaction with the management of public services. This dissatisfaction with the actions of the government was demonstrated through public rallies and the burning of effigies of Jack Elder at protests involving both firefighters and members of the public.

There were also quite significant social consequences of the Service's actions. This includes the substantial stress and anxiety associated with losing a job, particularly if it is suggested that one may not be eligible for redundancy payments depending on whether one did or did not apply for a new position. For example, a Christchurch newspaper reported that on the day the Fire Service released its proposals, a firefighter signed up for a mortgage on his first house only to have the bank cancel it shortly afterwards due to the nature of his occupation (Gee, 1998).

6.3.6 Appeal of the Employment Court Ruling

Both parties decided to appeal aspects of the Employment Court ruling despite agreeing to resume negotiations. However, in November 1998, the Fire Service initiated implementation of restructuring in which 110 firefighters' jobs would be lost. Ongoing negotiations meetings were to discuss the reductions, the necessary consultation on the cuts, and the employer's draft of their surplus staffing procedure. At

the time there were 129 vacancies within the Service, indicating that no firefighters' needed to be made redundant. At the regional level the plans required some transfers or relocation warranting discussion with the Union. However, the Union disagreed with the implication that there would be 110 fewer firefighters, reducing the number of firefighters on duty by approximately 30 a day.

In November, the Union advised the Commission that it represented over 200 of the 250 CST members and that it would be pursuing one collective employment contract at the national level for all members. There was little objection from the employer and this has since become one of the critical issues for both parties. However, negotiations were put on hold until the result of the Appeal hearing.

Additional Legal Proceedings

In November 1998, the Fire Service initiated restructuring in which 110 firefighters' jobs would be lost. Ongoing negotiations meetings were to discuss the reductions, the necessary consultation on the cuts, and the employer's draft of their surplus staffing procedure. At the time there were 129 vacancies within the Service, indicating that no firefighters' needed to be made redundant. At the regional level the plans required some transfers or relocation warranting discussion with the Union. However, the Union disagreed with the implication that there would be 110 fewer firefighters, reducing the number of firefighters on duty by approximately 30 a day. In November the Union advised the Commission that it represented over 200 of the 250 CST members and that it would be pursuing one collective employment contract at the national level for all members. There was little objection from the employer and this has since become one of the critical issues for both parties.

In January 1999, the Union filed proceedings to prevent the employer from implementing its latest plans for restructuring, which were devised in November 1998. According to the Union, the Fire Service appeared not to have learnt any lessons from the Employment Court ruling and simply developed further plans to reduce staff and appliance numbers. The injunction application alleged that the employer had breached the contract through failure to consult, imposed an unfair redundancy procedure, and argued that a genuine redundancy situation did not exist. Thus, the injunction was sought to prevent the employer from proceeding with the restructuring plans until it had undertaken a proper consultation process with the Union and had instituted a fair redundancy process. An injunction was also pursued to prevent the employer from

replacing firefighters with volunteers. The staff cuts in some major cities were predicated on the availability of CST members to work on night shifts in a 56-hour roster. However, the reluctance of CSTs to do so affected the ability to provide adequate coverage at night. The Union suggested that professional and CST firefighters be integrated to ensure adequate cover on night shifts.

However, despite the court proceedings the Fire Service reaffirmed its commitment to successfully restructuring the Service. It pointed out that the 1998 injunction did not curtail any restructuring plans, just those for which the injunction was issued. It also based its rationale upon claims of improving public safety and service quality through the improvement of education and prevention rather than response. It depicted firefighters as “militant old boys unwilling to give up their considerable perks and their second jobs, and unwilling or even incapable of learning anything new, and whose old-hat stance is effectively endangering the public” (Berry, 1999a: 6).

The Employment Court granted the Union’s interim injunction, requiring the Commission not to implement its November plan and restrained it from dismissing firefighters for redundancy. It was determined that the November 1998 restructuring plan was substantially different from the June 1998 proposal to disestablish all firefighters’ positions. As such, the Fire Service was legally required to consult with the Union over the new proposals. The Union was awarded \$12,500 in costs plus disbursements. However, the injunction was subject to substantive hearings

Roger Estall presented a speech on the behalf of Jack Elder at the Auckland Provincial Fire Brigades’ Association on February 13, 1999. It was expressed that “it is unfortunate but inevitable that the changes will have profound effects on some individuals but many people in New Zealand work places deal with change without that type of reaction.” Thus, the Minister condemned the activities of some paid firefighters in reacting to changes to their employment. The activities referred to included the alleged intimidation of volunteer firefighters by professionals. The Union denied the allegations, stating that there was no evidence of such intimidation but that there was evidence of the intimidation of professional firefighters.

Mr Elder reiterated the Service’s intention to restructure, fuelled by the goal of reducing fire-related deaths in residential properties by 50 per cent. It was, however, questioned by critics, how this reduction could be achieved given the parallel objective of reducing firefighter numbers. Many observers considered the goal to reduce fire deaths to rely on the activities of firefighters. Conversely, the Service argued that fewer

firefighters would ensure a more efficient response to fires. The primary aim, however, appeared to be a plan to reduce the incidence of fires, thus reducing fire fatalities and the need for firefighters. Correspondence within the Service's management team at the time indicated that while progress was being made on a draft contract to offer to employees, there needed to be a corresponding reduction in numbers in order to make the contract affordable. In an email dated March 2, 1999 the manager of human resources, Vince Arbuckle, "Quite simply, if the organisation does not, or is not able to reduce headcount to the levels on which modernisation is predicated then it cannot afford the sort of increases to remuneration previously referred to."

6.4 The Accord Process

Early in 1999, the chief executive Jean Martin, approached the Union to initiate secret negotiations meetings. According to Mike McEnaney, Ms. Martin stated that the Commission had "lost the plot," that Roger Estall was a "lunatic," and that the parties had a brief window of opportunity in which to rectify to existing situation. Both parties to the Accord felt something needed to be done to save the organisation. The solution consisted of the parties engaging in secret meetings to determine if they could achieve an agreement and thus resolve the eight-year dispute. This agreement, known as the Accord, would then be presented as to the Commission for their authorisation. It was hoped that presenting a *fait accompli* would induce the Commission to agree to the precepts of the Accord. Thus, Jean Martin entered negotiations with the support of her operational committee but without the Commission's knowledge of the meetings. It was so secretive that only four members of the Union's executive committee were aware of the process and two of those representatives, Mike McEnaney and Derek Best, were involved in the negotiations. Over a four week period the negotiators worked through an agreement that required concessions from both parties. The Union representatives reported the result back to their executive committee, who accepted the Accord, while Jean Martin presented it to her senior management team including eight regional managers who also accepted it.

During an initial meeting Mike McEnaney requested, as a prerequisite of the secret negotiations process, that in the event of the Fire Service refusing to honour the agreement the Union would be informed who obstructed the agreement and why. Why

Jean Martin requested an adjournment to consider the request the Union wondered if the process had been impeded before it began. However, Jean Martin agreed to the request and subsequently informed the Union that Roger Estall refused to accept the Accord.

The agreement would entail a reduction of 100 firefighters' jobs, a pay increase, and increased routine hours worked by operational firefighters. The agreement would result in the cancellation of further legal action. Much of the detail of the Accord remains unknown, with only selected points released by the parties. Roger Estall and the other Commission members considered the Accord for a number of weeks before finally refusing to ratify it. After receiving the agreement, while the process remained secret from firefighters and the public, Estall released news of the Accord to the UFBA conference in Invercargill. He stated how it had arisen and that it was not appropriate for the organisation or for volunteer firefighters. Estall's apparent reasons for refusing it pertained to its failure to reduce firefighter numbers by his preferred level and that it would enable the Union and professional firefighters to retain a degree of power. The Union considered this to be a tactic to manipulate them into releasing details of the document and therefore stalling the process. When Estall released the details the media picked up the event and the Union was subsequently forced to relate the course of events to their membership. However, full details of the agreement were not issued to firefighters.

Implications of the Accord Process

After receiving the agreement for ratification and leaking the details, Estall delayed giving his decision for a few weeks. During this period there was great debate over the issue, including the government, various interest groups, the public, and firefighters. It gained substantial coverage in the media as the matter had significant political implications, both within the Fire Service and within the Government. Internal Affairs Minister Jack Elder was reported as being "cautiously optimistic" over the possibility of ending the long-running dispute (Stevens, 1999). However, Elder later argued against the nature of the Accord, stating that while the dispute needed to be resolved it was not a case of pursuing peace at any cost. Elder was quoted in an article as saying "I can understand the public having concern, but we are dealing with some intractable problems among a group of highly organised people who are determined to protect their interests" (Bingham, 1999).

The Accord created an explicit division within the Fire Service, dividing the senior management team from the Commission members. On one hand, Roger Estall and the other Commission members had the support of the Government for the planned reforms. On the other hand, however, the chief executive, the national fire commander, and the regional managers all expressed doubt about the nature of the reforms. Thus, the people with operational knowledge and experience disagreed with the reforms. It was alleged that Roger Estall attempted to keep Ken Harper, who was appointed by Jean Martin, from assuming the position of national fire commander when it became apparent that he disagreed with proposed changes, including plans to reduce appliance crews (Bingham, 1999). This contention apparently resulted in a number of confrontations between Harper and Estall, whereby Harper argued that the commission's plans contravened international standards and best practice. Harper's key argument against the commission's move to reduce some appliance crews to three firefighters is predicated on the lack of research behind the proposals. Harper argued that the changes were not based on established firefighting principles and wanted to conduct a study to determine their effectiveness before implementing the changes. Previously, the public had not been entirely convinced that the restructuring proposals were ill-conceived, however, Harper's expert opinion as a career firefighter appointed after an international recruitment search served to sway public opinion.

The division between the management team and the commission resulted in the parties agreeing to enter mediation. It would seem a rare event in an industrial dispute when two opposing factions within management have to enter mediation rather than management and labour. While management was engaged in mediation, senior government ministers directed Internal Affairs to report on the options available to resolve management and employment issues in the Fire Service. Apparently the options included dismissing either Jean Martin or Roger Estall, or both, and issuing a directive from the Government on how the Service should be managed. It appeared that endorsing the Accord was not considered a valid option (Venter, 1999).

The Union stated it was concerned about who was actually in charge of the Fire Service. Legislation specifically enacted to clarify this issue appeared to have been ignored. The Fire Service Act placed the chief executive in control of employment relations and general management issues, whereby the Commission was relegated to a strategy and policy-setting role. One of the reasons given for a decision in 1993 not to appoint Estall to the Commission related to his apparent inability to distinguish the role

of the Commission from that of the chief executive. It appears that this issue had not been resolved as the Commission increasingly overstepped the realm of their duties and impinged upon the chief executive's ability to perform her duties. According to one source quoted in the Evening Post, "the Fire Service has generally had a gutsful of the commission. They're actually designing fire pumps, they're absolutely out of control" (Stevens, 1999: 1). Martin was later accused of overstepping her responsibility as chief executive to negotiate within the parameters set by the commission. Others applauded her proactive approach to achieving an agreement with the Union as illustrating her ability to fulfil her responsibilities as chief executive.

The Government sought legal advice regarding their powers under the Fire Service Act and subsequently issued a written directive under Section 13 of the Act giving the commission direct instructions and a time limit in which to execute those instructions. The expectations set out in Roger Estall's letter of appointment were reiterated, including the requirement that restructuring be carried out within the financial parameters to increase efficiency. The directive from Jack Elder dated March 25, 1999 stated:

Given the current situation I am directing you, pursuant to Section 13 of the Fire Service Act 1975, to provide me with a detailed programme of change to meet the Government's expectations, timelines, and how these changes will be managed and effected. This must be with me by close of play Wednesday March 31.

The tight deadline caused some observers to presume that the workable restructuring plan required by the Government would be based upon the Accord brokered with the Union. As the agreement would add approximately \$10million to the cost of restructuring, it did not fit into the financial parameters imposed on the reform process. However, just one day before the report was due, Estall reported having received legal advice denigrating the Accord, stating it was legally flawed, unfeasible, and would result in the commission relinquishing some of its statutory responsibilities. Conversely, the Union claimed that its legal advice had concurred that there was no legal problems or flaws with the Accord. In his media statement, Estall also disputed the Accord's reduction in firefighter numbers, claiming that the positions disestablished would be those of CST members who were considered the most productive operational employees in the Service. However, the Union rejoined that Estall was attempting to

find excuses for rejecting the agreement and that CST positions would not be specifically targeted (Espiner, 1999a).

The Commission's response to the Government-issued directive was reported to have failed to satisfy the Ministers intervening in the matter, particularly as the report was not endorsed by Fire Service management. Subsequently, the deadline was extended in order for the commission and the management team to produce an agreed blueprint for the future. A compromise was finally achieved, including Estall agreeing to undertake further research before reducing firefighter numbers by 300. The Government accepted the proposal, but Estall was warned he was on probation and that differences between management and the commission had to be resolved.

From that stage developments progressed quite rapidly. Relations with the Union quickly deteriorated as management refused to disclose details of the new plan. The Fire Service audit indicated a marked decline in the commission's financial and management performance, giving it a "not adequate" rating as no effective control framework for processing systems had been in place since the restructuring that was commenced in 1997. Further inquiries revealed that, in addition to the \$1.3 million spent on legal fees, the commission also spent approximately \$500,000 on public relations in 1998, including several thousand dollars paid to facilitate a visit by Estall to the site of a fatal fire. It appeared that a large part of the public relations expenses were used to justify the Service's cost-cutting measures to the public. However, Jack Elder later justified this expenditure as acceptable.

Fire Service Strategy

The division in the Fire Service resulted in, to a certain extent, a temporary tripartite employment relationship. Within the scope of this relationship, the Fire Service management and the Union engaged in negotiations based on one strategic approach while the Fire Service Commission continued to work under the axioms of its forcing strategy, which included a non-negotiation element. Thus, the strategies of the two factions can be analysed separately.

It could be argued that the Commission's approach was to assume a non-negotiation stance pending the outcome of their appeal of the Employment Court ruling preventing them from disestablishing all firefighter positions. However, on learning of their senior management team's secret negotiations, the commission, through Roger Estall, engaged tactics designed to frustrate the process and success of the Accord.

When Estall revealed details of the Accord to the UFBA, the Union argued that he did so to create uproar within their membership. It was emphasised that two Union officials had negotiated a secret deal. This description of the Accord process was designed to galvanise dissent within the Union and cause firefighters to question the actions of their elected officials.

The advent of the Accord produced interesting dynamics in the process of managing internal differences. The Fire Service did not provide substantial evidence of this, however, it can be assumed that Jean Martin had to galvanise support for her plan while maintaining secrecy. This would require seeking the support and consensus of a specific group of managers without the knowledge of the Fire Service Commission. The need to diffuse any differences within that group of managers would be complicated by the necessity that the entire process remained secret. It can be argued that Martin simultaneously engaged both of the tactical activities associated with intraorganisational bargaining (Walton and McKersie, 1965). The Accord involved secretly organising support for the plan while rallying senior management against the Commission. This is effectively fostering consensus within one group while encouraging diversity, even dissent, between others; all within the same party.

6.4.1 Union Strategy

After the commission and senior management reached agreement on a new plan for restructuring of the Fire Service, the Union requested a copy of this plan. According to Derek Best in a letter to Jean Martin dated April 8, 1999:

If it is your intention to attempt to renegotiate the Accord, the Union sees this as fraught with difficulties.

Before such re-negotiation can be even contemplated, the Union requires to be provided with a copy of the new plan. If the plan, which by definition the Union must agree to, and for it to be able to be implemented in any reasonable timeframe, is not provided to the Union, then the Union would have to act as if any negotiations were commencing back at square one.

If the plan is not able to be implemented, it seems from the government's letter to the Commission that the government would recommend to the Governor General to exercise the Section 8 removal powers.

Thus, the Union found itself in a strong position to influence the course of negotiations. The continuing employment of Roger Estall and Jean Martin relied on their ability to resolve the industrial dispute and implement reform of the Fire Service within certain deadlines. To achieve both parts of that requirement necessitated successful

negotiations with the Union. The Union had indicated a propensity to initiate legal proceedings if it felt the employer's strategies demonstrated intentions to bypass the legal requirement to negotiate. Therefore, the Fire Service's dependence on the Union has increased with the directive to achieve the government's instructions. According to Derek Best, "we are certainly in a very interesting position which we've certainly never been in before where we do know the bottom line" (Espiner, 1999b: 3). However, when the Union did receive information relating to the new approach it was argued to contain platitudes that led many firefighters to raise the issue of industrial action. Among the Fire Service's objectives were those that had been attempted in the past, such as significantly reducing costs, expanding volunteerism and focusing on fire safety. The Union was subsequently informed that it would not be receiving a copy of the plan.

6.4.2 A Change of Management

In May 1999 the Fire Service Commission filed proceedings to continue with its appeal of the Employment Court judgment preventing it from disestablishing all firefighter positions. This came at a time when Roger Estall and Jean Martin were under probation to improve the Service's performance and initiate restructuring. While the achievement of these objectives appeared to rely in part on obtaining the agreement of the Union, the move to proceed with the appeal suggested that this was not the case. According to United NZ MP, Peter Dunne, the development indicated that the real agenda of the Fire Service was not to restructure and reform but to break the power of the Union (Bell, 1999). On May 18, 1999 Roger Estall tendered his resignation to take effect from May 20:

To be quite blunt I have had a gutsful. I am sick of being a political football. I have been subjected to a campaign of character assassination and denigration that has been unrelenting. ...I am used to working in an environment where reason, knowledge and logic prevail. This approach has led to certain conclusions in relation to the Fire Service that are unacceptable to my critics. They have preferred to denounce and demonise me rather than answer the arguments. They will stop at nothing to resist the forces of modernisation despite the clear evidence of the need for it.

On his resignation Estall received a \$68,000 payment. Jean Martin, who received an undisclosed sum on her resignation, shortly followed. The new chairperson of the Commission was appointed approximately 24 hours later. Margaret Bazley, chief executive of Social Welfare, planned to treat the position as a part-time overseeing role whereas Roger Estall had assumed a more hands-on, executive approach. Bazley later

appointed a Social Welfare colleague, Alison Timms, to the position of chief executive, stating Timms had a history of managing public sector organisations through major change.

The Union met with Margaret Bazley and Alison Timms in order to reiterate their stance that an resolution needed to be in a package form as the issues were interrelated and that the previous Accord provided a good basis from which to progress. However, it soon became evident that developing a resolution to the dispute would not progress more smoothly with the change of management. While the Union was invited to resume negotiations, firefighters questioned the value of doing so while the threat of litigation pursuing the right to disestablish all firefighters' positions remained in effect. The previous Commission had revealed that one of its tactics was to maintain an element of tension in their preferred strategy by continuing to prepare for the appeal of the Employment Court ruling and it appeared that this was still the case. Given the Commission's plans to make approximately 300 firefighter redundant, the Union instigated legal proceedings against the employer's plans to recruit new firefighters. However, this issue was resolved when the Fire Service gave an undertaking that protected the redeployment for existing firefighters who otherwise may have later been made redundant.

Soon after the changes to management it came to light that professional firefighters had been accused of intimidating and harassing volunteers. Most of these allegations originated from Taupo, where both professionals and volunteers staffed a brigade. Union officials argued that these claims were unsubstantiated and that, in fact, professional firefighters had been taunted by volunteers, who claimed to be usurping the jobs of professionals. It was later reported that a professional firefighter faced internal disciplinary charges for harassment and a volunteer faced charges for an assault against a professional. Other brigades with both professional and volunteer staff, such as Invercargill, accused management of generalising what was a localised issue in Taupo while other areas enjoyed harmonious relations between professional and volunteer staff. However, Bazley reiterated that the accounts of intimidation were the worst she had experienced in more than 35 years of public service.

The allegations became fuel for a media debate over who was harassing whom and why. Both parties claimed their allegations were accurate while the denials of the other party were devious. The Union requested that a full investigation take place, stating that any firefighter who engaged in such behaviour should be dismissed. The

police had investigated individual incidents but no charges were laid due to a lack of witnesses or evidence. The media focused on the Fire Service's accusations that the Union was closing ranks around the few individuals who were allegedly to blame for the behaviour, thus tolerating the unacceptable behaviour of those members. On the other hand, the Union accused the Service of specifically timing the allegations to coincide with the lead-up to the Court of Appeal hearings in an attempt to influence public support for firefighters. One journalist surpassed the allegations to highlight the underlying issues. According to Maling (1999: 9), "...who is to blame for the incidents hardly seems the point. It can't be a healthy sign where the workforce is not only fighting its management but also each other." This observation, coming just after disagreements within management resulted in the resignations of senior executives, emphasises the conflictual and antagonistic nature of relations within the Fire Service. The animosity was augmented by the employer's continued pursuit of the previous Commission's appeal against Employment Court rulings. In an Alliance Party media release in October 1999, Grant Gillon commented that "no good employer takes their own staff to court in an effort to sack them all." However, the Fire Service maintained that it had a case against the rulings, contending that managerial prerogative should allow them to restructure as they deemed fit.

6.5 The Court of Appeal Hearing

On October 11, 1999 the parties returned to court to hear the Fire Service Commission's appeal against earlier Employment Court rulings. The Commission brought three appeals against Judge Goddard's decisions. The first pertained to the permanent injunction preventing the Fire Service from disestablishing firefighter positions and replacing them with the not substantially different fire officer positions, known as the "McCulloch appeal." The second appeal was against a November 1998 ruling ordering the Commission to pay costs of \$150,000 and disbursements, known as the "costs appeal." The final appeal related to the separate Employment Court proceeding in February 1999, in which the Commission was further restrained from implementing the restructuring plan devised in November 1998, known as the "Mitchell appeal."

The Commission's argument in the McCulloch appeal was predicated on the belief that the existing employment contract impeded the Commission's ability to place primary emphasis on fire prevention through restructuring. However, the Union's lawyer clarified the employment contract and the firefighters' position, pointing out that the routine hours worked by firefighters has always included an element of fire prevention duties and that firefighters were happy to perform such work. Thus, the McCulloch appeal was dismissed. The Fire Service reported the Union's concession whereby firefighters would perform preventive work outside standard routine hours would serve to advance the goal of emphasising fire prevention. Previously, initiating such work beyond routine hours had required the agreement of firefighters.

In appealing the awarding of costs by the Employment Court, the Commission had to demonstrate that Chief Goddard erred in principle, took irrelevant matters into account, omitted relevant considerations, or arrived at an incorrect conclusion. As the Court is empowered to award costs as it deems reasonable, this type of appeal becomes an investigation of a Judge's exercise of discretion. The Court of Appeal ruled that while the award of costs and expenses may have been generous, it was within a reasonable range available to the Judge. Thus, the costs appeal was also dismissed and the Commission retained its obligation to pay the Union \$186,626 in costs and disbursements.

The Mitchell appeal was based on the employer's belief that the October 1998 Employment Court did not preclude it from proceeding with restructuring plans based in part on reducing staff numbers, insofar as the subsequent plans would not change the terms and conditions of employees' employment. The new restructuring proposals were to be introduced in two stages, whereby consultation was only offered to employees regarding the second stage. The plaintiffs did not lodge an application for an injunction until after stage one was initiated, thus limiting the effectiveness of their legal action. It was argued that there were considerable differences between the two restructuring plans of June and November 1998. The initial proposal included the disestablishment of all firefighter positions and a new employment contract featuring a changed shift system, removal of overtime pay, and reductions in the numbers of some crews. It was stated that almost a decade of negotiations had failed to achieve the changes needed for the Fire Service to achieve its objectives so employees had been notified of its intention to abolish the contracts. The subsequent plan, however, retained the existing contract with its extant shift system, whereby only those firefighters who were considered surplus to

requirements would be dismissed. The Chief Judge of the Employment Court ruled that the November plan was significantly different from the June plan and therefore was subject to the consultation requirements. The Court of Appeal ruling expressed doubts that any meaningful consultation could be limited in the ways intended by the Fire Service, whereby employees were consulted over the methods of implementing plans to reduce staff numbers rather than the actual plans. In overturning the Employment Court's injunction, the Fire Service counsel had to prove that Chief Judge Goddard was wrong, as a matter of law, in deciding that the Union had an arguable case regarding consultation matters. Thus, the Court of Appeal dismissed the Mitchell appeal.

In response to the ruling, the Union reported to its members that "a better result for the Union and firefighters could not be contemplated." According to a media release issued on October 12 by acting chief executive Alison Timms, the "agreement...draws a close to a long and controversial chapter in the history of the New Zealand Fire Service. The Service looks forward to a new and positive period ahead for the New Zealand Fire Service."

6.6 Current Negotiations and Issues for the Future

6.6.1 Current Negotiations and Issues for the Future

The implications of the appeal ruling were that if in the future the Fire Service initiates a restructuring proposal it would be acknowledged as a new proposal requiring proper consultation with the Union. This would appear to preclude the further use of strategies designed to unilaterally abolish the existing employment contracts and implement new terms and conditions at will. A fundamental change towards such an approach had already started within management, heralding a more conciliatory approach to negotiations on the part of both management and the Union.

Soon after the Court of Appeal ruling, the Fire Service announced that the Fire Service levy would be increased to the level at which it was set before the Commission headed by Roger Estall lobbied its decrease. Thus, the levy was returned to 6.2 cents per \$100 of insured value. This rejuvenated the funding disputation that regularly arose during the course of the last decade. While many reports aimed at influencing the method of funding the Fire Service originated from the Insurance Council and the Business Roundtable, consensus was established among many groups whose ideologies tended to differ fundamentally. For example, the Business Roundtable and the

Firefighters' Union both agreed that the prevailing funding system was highly inequitable and inefficient, whereby those who paid insurance funded those who did not but received the same level of service from the Fire Service. Derek Best argued that this indirect tax increase would not have occurred if the Government acknowledged recommendations and administered an equitable funding system. While some blamed the Fire Service's financial problems on the Union's intransigent approach to negotiating the efficiencies required, others blamed previous management teams for their illegal attempts to instigate restructuring that resulted in significant legal, consultancy, and public relations expenses.

A Change of Government

On November 27, 1999 a Labour-Alliance coalition was voted into government. As left-wing opposition, the parties had long supported firefighters in their industrial dispute. As such, their election into government was expected to introduce changes in terms of both policy and attitude. The Union identified key issues such as restoring the influence of the operational, uniformed aspect of the Service. In the past it has been commented that many problems with management arose out of their lack of operational experience or knowledge. The Union also predicted a change in management's attitude to negotiations, whereby negotiations and consultation would occur in a more genuine fashion. The new Government had established its campaign in part upon a promise to repeal the Employment Contracts Act and introduce what many would consider to be a more balanced employment law. The new Minister of Internal Affairs, Mark Burton, met with both the Union and Fire Service management in a proactive approach to working towards a resolution. Burton wrote to the Fire Service asking that all proposed changes be put on hold until the new Government could make a proper consideration of the issues. Under the new coalition the Fire Service Commission faced its own disestablishment as Labour planned to investigate the formation of a Ministry of Emergency Services, which would render the Commission redundant. Within the proposed Ministry the Fire Service would return to its expanded role in emergency services. Previously the Service had been a prominent force in responding to a wide range of emergency incidents, such as natural disasters and motor accidents. However, under the direction of Roger Estall moves had been made to return to the "core business," arguing that the Fire Service could not afford to be a surrogate ambulance service (Berry, 1997).

The Future of Employment Legislation

The new Government brought with it a pre-election promise to repeal the Employment Contracts Act and replace it with legislation that achieved a more equitable balance between labour and management. During the later stages of this dispute, this legislation was passing through its developmental stage and undergoing considerable public debate. The Employment Relations Bill is not due to be enacted until August 2000, but its precepts impacted upon prevailing contract negotiations, within the Fire Service and in the labour force in general.

The fundamental principles of the Bill relate to freedom of association, good faith bargaining, and problem resolution. While union membership will remain voluntary, only unions will be legally recognised as party to a collective agreement. In order to do so, unions will need to apply for registration with the Registrar of Unions. There are also several provisions emphasising the need to recognise unions as employee representatives, including allowing officials onto work premises for at least two paid union meetings with members each year. A Code of Good Faith will be developed to complement the law and will govern the practise of collective bargaining. This requires the parties to meet for the purpose of negotiation, whereby they must consider and respond to any proposals made. In this form, good faith bargaining is also believed to necessitate the exchange of information regarding a bargaining position and providing justification for that position. This precept elicited great debate, with employers arguing that this requirement could force them to divulge commercially sensitive information. It was argued that the obligation to do so would threaten their business and grant unions a dominant position in terms of bargaining power.

The problem resolution provisions are of the most interest within the context of this study. The Employment Relations Bill will endow the Department of Labour with the responsibility of providing a range of mediation services. The aim is to provide these services without them being overly formal or legalistic, whereby mediators will have the discretion to assist in dispute resolution as they see fit. These services are not provided with the intention that they will result in the settlement of all disputes, but they aim to assist or intervene in any way that might make a difference. It is possible that in cases like the Fire Service, the informality and lack of pressure inherent in these services might assist the parties to consider the dispute resolution services offered.

In summary, the fundamental nature of the forthcoming Employment Relations Act conveys interesting implications for collective bargaining. It seeks to redress the

current imbalance between unions and employers, particularly through provisions allowing only unions to be party to collective contracts. However, critics have argued that this is a step backwards by reintroducing compulsory unionism to the workplace. Other observers, however, have reported that the country's business sector remains ambivalent about the changes (Harman, 2000).

Issues for Negotiation

It has been argued that the Fire Service has been left in tatters after years of unsuccessful attempts at restructuring and successive management teams lacking operational experience (Henderson, 2000). Formal training has been largely ignored and there are severe problems with staffing shortages and excessive overtime. One of the most important issues for the parties to resolve, according to the Union, relates to how all firefighters can be employed on a single collective employment contract. This illustrates one of the most significant implications of previous negotiation strategies. In 1996 the Fire Service introduced Community Safety Teams, arguably as a means of imposing their preferred employment contract on at least a portion of the workforce and in order to undermine the Union. The apparent objective was to introduce the teams and, by inducing anxiety about job security in Union members, eventually employ all operational firefighters on the CST contract. This did not eventuate, however, and the Fire Service was left with two groups of firefighters employed on different terms and conditions and with a different level of skills and training. Due to the nature of the deployment of CSTs, professional firefighters condemned both their employment as usurping professionals' jobs and their supposedly inferior training. The CSTs received an initial 13 weeks of training followed by minimal ongoing training or mentoring. Professional firefighters, however, completed an initial 9-week training course followed by a probationary period, with examinations to be passed in order to be promoted. Overall, it took three years to become a qualified firefighter and a further two years to be promoted to a senior firefighter role. Professional firefighters did not blame the CST members as individuals, but blamed the Fire Service for their implementation and insufficient training. This did, however, impact upon the relationship between the two groups. Professionals castigated CSTs as being untrustworthy and unreliable at incidents due to their lack of experience and training.

The perception that CSTs had taken the jobs of professionals also had adverse effects on the relationship. Relations between the groups did thaw slightly when

increasing numbers of CST members realised they had an inferior employment contract, including the requirement that they work volunteer shifts, and joined the Union. The previous Commission's attempt to disestablish all firefighters, including CST members, also served to engender a degree of unity against the common enemy, however this was not enough to overcome the entrenched conflict. The national commander, Ken Harper, reported that he initially believed there was little hope of integrating the Fire Service's workforce. However, it has been argued that, with improved training, the CSTs could be raised to meet the standard of other firefighters. Professional firefighters also require the reinstatement of a formal training programme in order to manage and improve their skill levels (Henderson, 2000).

Exacerbating the difficulties involved in integrating two highly differentiated groups are the firefighters who were originally professional firefighters but transferred to CSTs after being offered money and a promotion. The Union describes the \$8000 received by these firefighters as a bribe, but they remain blacklisted as "scabs" and are unlikely to be accepted by firefighters again. The Union claimed that many of those who transferred would not have received promotion otherwise, fuelling the contention that unqualified individuals headed CSTs. In light of these facts, the Union's agreement that its professional members and CST members should be employed on one contract as an integrated workforce could be construed as a significant concession towards a conciliatory approach to resolving the dispute. According to the Transalpine Fire Region Manager, Brian Joyce, the success of integrating CSTs and professional firefighters will vary according to the location. Joyce predicts fewer problems will be experienced in the Transalpine region than in the Auckland area, where feuding has become personal and emotive between the two groups. Joyce reports trying to ensure that the differences between CSTs and professionals remained at the conceptual level based on differences in employment terms and did not become personal. As such, the differences are easier to reconcile, as they do not include matters of personal conflict. According to Joyce, "we have one CST [at Christchurch Central fire station] and apart from the fact that they work on different contracts and they ride on different fire engines, they work on the same fire station, they eat in the same mess, they drink from the same teapot." Thus, the integration issue could be easier to overcome if this attitude prevails in the majority of areas where CSTs were implemented.

Under the guidance of the new Government, Fire Service management states that it is not planning further restructuring surprises or large reductions in staff numbers.

Both parties appear to be committed to bringing an end to the almost decade-long dispute. However, a history such as the one shared by the Fire Service and its employees appears insurmountable if the parties are unwilling to forgive, or at least forget and move forward. According to Ken Harper, "In Northern Ireland we had a common enemy, the bomber, arsonist and terrorist. In New Zealand, the enemy is within, eating like a cancer and destroying the Service" (Henderson, 2000: 4). However, an issue the Union perceives as hindering progress is the retention of key individuals on the Commission and in management who were involved with the harsh negotiating strategies of the past. The new Government considered removing members of the Commission whom had been directly involved in the mass dismissal plan. However, to do so would require large payments to the individuals, as this was not a valid reason for terminating their appointment. Thus, they were to serve their terms and not be reappointed. The Union argued that the presence of such individuals maintained an element of distrust and wariness between the parties.

At the time of writing, both parties reported that they were hopeful a contract would be negotiated in the near future. However, generally distributive issues such as pay rates, hours of work, and other conditions of employment had yet to be discussed. According to Mike McEnaney, "we're still trying to work our way through how we're going to integrate these people that parade around as firefighters, who aren't." In mid-June 2000, it was revealed that the Minister of Internal Affairs, Mark Burton, requested that the Fire Service and the Union negotiate a contract by the end of July (Brockett, 2000a). It was also suggested that engaging a mediator might assist in meeting this deadline. Brian Joyce, as a member of the employer's negotiating team, stated that this timeline could be adhered to if the parties could engage in negotiations free from external influence and interference:

I don't have a problem with the time line, and in fact, I believe that if we were able to just stay together and keep working we'd get there easily. I'm pretty confident that we will come up with an agreement. I just wish we could have a bit of time away from the political games that get played. Like in this morning's paper there was the retaliatory response from the National party's spokesman on Internal Affairs about how much it's going to cost them if they do what the Minister says... I believe one of the reasons we have made progress in the last several months has been because we have had a tacit agreement between the parties that we will do our negotiating

in the negotiating room and not in the newspaper. And when we run into problems we deal with those problems.

The newspaper article that Joyce referred to contained comments from the Opposition party that the Fire Service wasted \$30 million each year in unused time. It was argued that big pay claims from the Union could cost up to \$25 million, causing a potential increase in the Fire Service levy of 15 per cent (Brockett, 2000b). This was followed by further comments from Lindsay Tisch, Opposition Internal Affairs spokesperson, that firefighters had a 'cushy' job and spent most of their working hours doing nothing. According to Joyce, "we would be better left not to have to deal with those interferences...because they become battles or skirmishes and they have nothing to do with the war. At the end of the day you want to come to end of the war and both parties will want to feel they've won."

6.7 A Combined Strategy: Mixed Integrative and Distributive Bargaining

In order to move on from the context of a forcing strategy and progress toward reaching an agreement, the parties needed to engage in an element of integrative bargaining. This may have been facilitated by the parties' weariness with fruitless negotiations, but would have required a reasonably honest and open approach to communications from both parties. Processes and systems have been developed in order to foster a more cooperative relationship. For example, firefighters at the Christchurch Central brigade are involved in a community risk analysis project, while a computerised resource allocation model is being developed at the national level. While the outcome of such projects will determine the application of the Service's resources and, therefore, might result in fewer firefighters being required, it provides a rationale for such changes that firefighters could accept as scientific and reasonable.

If we can reduce the number of fires, we've got to be mature enough to recognise that that will bring some feeling of threat to firefighters, who might feel that they're not needed anymore. But if he's actively involved in the campaign that's keeping the fires down, he's still needed. But he's got to come to see that. And we've got to recognise, as a manager, that the prize for reducing fires is in the benefits to the community, not in reducing the immediate cost.

Thus, it can be seen that Fire Service management, the Union, and firefighters are engaged in an increasingly integrative approach to settling a contract and rebuilding the employment relationship. The establishment of working parties aided the development of this process, whereby each negotiating team nominated three members each to work on a particular project, with the responsibility of reporting back to both negotiating committees, rather than to management alone. Such initiatives indicate an increasing respect for the Union's role as a representative of employees and the contribution they can make to the development of work policies acceptable to all parties and their constituents.

The current approach to negotiations is not entirely consistent with a fostering strategy, however, but combines the tenets of both distributive and integrative bargaining in a mixed fostering and forcing strategy. Integrative agreements serve to reconcile the parties' interests and, in doing so, hold the potential for increasing the benefits for both parties (Pruitt, 1983). This can also be expressed in terms of the 'fixed pie' characteristic of distributive bargaining, whereby integrative bargaining works to increase the size of the 'pie' and therefore increases the portions, or benefits, available to each party (Walton and McKersie, 1965). The approach of the Fire Service management and the Union is mixed, as some issues are conducive to integrative bargaining while others are more likely to be resolved by distributive bargaining processes. For example, the issues of how CSTs and professional firefighters can be integrated, and how to determine the level and allocation of resources are appropriate for the problem-solving processes of a fostering strategy. This is illustrated through the parties' establishment of cross-party committees working on proposals for resolving such issues. Other matters, such as pay issues, are likely to be determined by distributive bargaining. However, the improved goodwill from integrative initiatives may serve to restrain the severity with which distributive tactics might be engaged.

In a mixed integrative and distributive approach, the integrative processes tend to widen the parameters within which negotiations take place, or increasing the 'pie,' while distributive bargaining determines the actual portion of the 'pie' allocated to each party in the final agreement. This does not preclude the existence and acknowledgement of conflict. The parties need to be able to confront each other and communicate effectively regarding issues of conflict in a way that does not impact upon concurrent integrative efforts. There is a need to realise that conflict is still a major issue and determine procedures for resolving conflict in order to progress towards an

agreement. This is particularly important within the context of a relationship that retains an element of distrust and wariness engendered by previous forcing strategies. The parties appear to have developed such procedures however, which are likely to be facilitated by the general agreement that negotiation issues are kept between the parties and out of the media spotlight.

It is possible to overemphasise, however, the extent to which the parties have engaged a problem-solving or integrative bargaining approach. In comparison to the preceding decade of negotiations, this period illustrates a significant change in the nature of negotiations. However, this change, arguably an improvement, is only relative; the parties remain at odds over various issues that are likely to be resolved through distributive bargaining processes. It appears that these negotiations will take place within a significantly improved relationship that may serve to curtail escalation of forcing tactics and its regressive effects on the employment relationship. For example, the parties have been engaged tactics relating to manipulating the assessment of utilities more than they have issued demands and threats. The manipulation of utilities, such as manipulating an opponent's assessment of their own utilities, is designed to renegotiate an opponent's bargaining position in favour of one's own agenda (Walton and McKersie, 1965). Such tactics tend to have a lesser effect on the relationship than committing unalterably to a certain position and issuing demands that it be agreed upon. The predominance of manipulation tactics signals abatement in the somewhat vitriolic interactions of the past. While distributive bargaining and milder forms of forcing tactics still predominate, the increasing alleviation of hostility may aid the development of fostering and integrative relationships in the future.

6.8 Conclusion

This stage of the dispute emphasises the impact and personality of individual negotiators. While Roger Estall was not directly involved in contract negotiations, his hands-on management style imposed upon negotiations. Furthermore, Estall retained control over the mandate given to the Fire Service's negotiating representatives, their bargaining agenda and position, and their general approach to negotiations. Subsequently, the consequences of such governance resulted in the chief executive approaching the Union in secrecy, hoping that the Commission would accept an accord

if it were presented as a *fait accompli*. However, this tactic resulted in the resignations of both Estall and the chief executive Jean martin, and introduced new senior managers to the Fire Service.

The initial stages of this strategic period illustrated an era of uncertainty while management, headed by a new Commission chair and a new chief executive, committed to pursuing the previous Commission's Court of Appeal case. This created a degree of uncertainty as the Union waited to gauge the nature of management's approach to contract negotiations under the influence of the new senior executives. It was not until the Appeal was overturned that overtures were made to the Union, engendering suspicion within Union ranks as to the motives behind the more conciliatory gestures. It has been suggested that the introduction of new people in key leadership roles can effect an improvement in excessively adversarial relations. This may have been possible if the Appeal proceedings had been terminated, but the continued pursuit of the right to restructure and reduce the number of firefighters sustained the Union's distrust of management. Exogenous forces, in the form of a new government with significantly different objectives for the Fire Service, enabled the parties to engage in a form of integrative and distributive bargaining; arguably a combined forcing and fostering approach to achieving consensus.

The current negotiations are still undergoing the process of recovering from such an extended period of acrimonious and bitter relations. Relative to previous negotiations throughout the dispute, the current period is closest to demonstrating an element of integrative bargaining, or a fostering approach; however, this is within a context predominated by distributive bargaining. Thus, the negotiations are not governed by a fostering approach, as such, but indicate a concerted effort to reaching consensus. According to Peck (1996: 33), the employment contract is a social contract "endowed with tacit expectations and embedded within relations of trust." It appears an element of trust needs to be recovered within the Fire Service before a contract can be successfully negotiated and ratified. Only then will the Fire Service be able to focus on rebuilding the more social aspects of the employment relationship that are not controlled by a legal contract. According to Walton et al. (1994: 332), "though it is clearly difficult to deal with distributive bargaining issues in the context of a fostering initiative, success in doing so typically proves to be a pivotal event in the relationship."

Chapter 7.

FINDINGS

7.1 Introduction

Based on the analysis of the Fire Service industrial dispute in the previous two chapters, this chapter discusses the ways in which the analysis addresses the specific research questions guiding this study. The first research question considers the applicability of the theoretical model upon which this research is based. The original case studies contributing to the development of the model were substantially different in nature and context from this case study. The characteristics of the original case negotiations incited the question of how the model applied to a context in which negotiations were in a protracted state of impasse:

How does Walton, Cutcher-Gershenfeld, and McKersie's (1994) framework and its propositions for negotiating strategy apply to a situation in which the parties are engaged in negotiations for a considerable length of time?

This question focuses particularly on the interaction system contained in the model, including the negotiating strategies, processes, and structure. An overview of the case dynamics or illustrations from the case are integrated with discussion, but a reiteration of the case chronology has been avoided as far as possible, given the extent of analysis already incorporated in chapters five and six.

The second research question focuses more specifically on the model's propositions and conclusions pertaining to strategic choice and how they contribute to an explanation of the duration of an industrial dispute:

What is the nature of the relationship between the duration of negotiations and strategic choice?

This question incorporates an analysis of the case dynamics, propositions from the theoretical framework, and extant theory to discuss the temporal dynamics of the case; specifically explanations why the Fire Service and the Union remained within a state of impasse for such an extended period of time.

7.2 Applicability of the Theoretical Framework: The Context of a Prolonged Industrial Dispute

It can be concluded that the propositions contained within the theoretical model derived from the research of Walton, Cutcher-Gershenfeld, and McKersie (1994) can be extrapolated to contexts of protracted industrial negotiations. Analysis of relevant data has shown that the elements of this model help explain the dynamics of the Fire Service industrial dispute.

7.2.1 Negotiating Strategies and Tactics: An Overview of Case Dynamics

The Fire Service's original strategic choice was based upon several pertinent factors, such as the historic context of interactions with the Union, anticipated feasibility of the restructuring objectives and labour's expected response, an analysis of relative and potential bargaining power, and various environmental considerations. The consideration of these determinants, as outlined in previous chapters, induced management to pursue a forcing strategy as the most appropriate means of attaining their imperative outcomes. The initiation of a major restructuring programme had critical implications for management's negotiations agenda. If the review of the Fire Service had not taken place, it is likely that negotiations would have focused on pay claims and general terms and conditions of employment. Compared to issues of organisational change, these are relatively straightforward matters that would likely have been successfully negotiated in a shorter timeframe. However, restructuring requirements compelled management to seek greater concessions from the Union with the goal of cutting operational expenses as far as possible. The resultant forcing strategy was consistent with the nature of past union-management interactions, however, it is not without implications for future interactions, which also needs to be taken into account when determining a negotiating strategy. The initial choice of a forcing strategy can propel the parties into a spiral of increasingly adversarial relations based on forcing strategies and distributive bargaining that can be very hard to overcome or neutralise. The Fire Service dispute illustrates this dynamic, whereby once the parties became engaged in negotiations, management's forcing strategy overwhelmed possibilities for more cooperative approaches. Potential opportunities to engage in a problem-solving approach tend to be sidelined when the parties are focused

on undermining the distributive tactics of their opponent in fiercely competitive negotiations.

Negotiations between the parties demonstrated the use of bargaining tactics at a point close to the distributive extreme on the distributive-integrative continuum from early in the dispute. For example, management were prepared to negotiate an interim contract not long after the expiry of the existing collective contract but required that it contained a contractual agreement from the Union accepting that restructuring would occur. This example highlights the competitive nature of the interactions from an early stage, reinforced when the Union served notice of strike action. Historical accounts of negotiations obtained from both organisations indicate that the parties rarely achieved significant progress in negotiating meetings. Most of the key tactics were initiated outside of these meetings but were designed to exploit what could be achieved when the parties did meet to negotiate. Negotiations meetings often witnessed substantial periods where the parties spent considerable time and effort arguing their own position while refusing to make significant concessions or movement from that position. At times these processes appeared to be enacted in isolation from any reasonable consideration of what negotiations could hope to achieve. For example, one party made a specific demand early in the dispute, which, after a period of negotiations, was then offered as a concession by the other party, only to be refused by the party who first demanded the clause. During that time the parties' bargaining objectives had remained relatively unchanged, thus the explanation for the refusal remained unexplained.

After approximately a year of ineffectual tactical activity, the Fire Service determined that a key factor inhibiting progress resided in the power of the Union to misrepresent or withhold information from its members. Management appeared convinced that employees would be more amenable to the employer's contract offer if they were fully informed of its contents without the influence of union biases. This led to Union allegations, substantiated by an Employment Court ruling, that the employer was attempting to expedite their negotiating agenda by bypassing the Union as the authorised bargaining agent and imposing their will on employees. These allegations were later overturned in the Court of Appeal, which determined that management had not intended to exclude the Union from the negotiating process but rather wanted to ensure that it was keeping members fully informed. The Court of Appeal granted the Fire Service the benefit of the doubt that, in doing so, it was not trying to undermine the authority of Union officials and create divisions within the membership.

The advent of the citizens initiated referendum demonstrates the part a union can play in contributing to the spiral of adversarial and competitive negotiations. It also provides an illustration of the ways in which a union can respond to management threats beyond the traditional use of industrial action. It has been argued that unions have recognised that the ability of a strike to offset the balance of power in labour's favour has become increasingly limited, and thus unions are being forced to find unique tactics to match managerial threats (Walton et al., 1994). Given the prevalent climate of significant reform in the public sector, the Union had to find a means with sufficient strength to terminate the proposal to reduce firefighter numbers. Subsequently, over drinks in a bar one night a Union committee member offhandedly suggested using the citizens initiated referendum process to let the public determine how many firefighters should be employed in the Fire Service.

The Union's success in initiating a referendum instigated a vociferous debate regarding the fundamental nature of the referendum question. On one side, the Union and its supporters argued that staffing levels in the Fire Service were a matter of public safety and therefore of national importance. On the other side, however, critics argued that staffing levels were essentially an industrial issue or a matter of managerial prerogative that management and the Union should be able to negotiate by themselves. In this manner, the Union took an agenda item beyond the realm of negotiations, where it arguably became an ideologically based issue of public policy.

The implementation of the Community Safety Team model illustrated a partial attempt to escape the employment relationship. However, in this case it was the employment relationship as defined by the governing collective contract and therefore the attempt was not consistent with Walton, Cutchner-Gershenfeld, and McKersie's (1994) *escape* strategy. An escape strategy is conceptually different from a forcing strategy, and includes activities such as hiring replacement workers or moving operations to other plants. The Fire Service used the precepts of this strategy in order to facilitate their forcing strategy. In other words, the partial implementation of an escape strategy was used as a threat. Management could not engage a complete escape strategy to hire a workforce on a unilaterally determined employment contract as the essential nature of the service requires an operational workforce to be available at all times. Furthermore, it would be extremely difficult for management to have replaced 1800 highly trained firefighters. Even when all professional firefighter positions were disestablished in 1998, the Fire Service relied upon Union members to reapply for the

new positions. However, the Union interpreted the employment of a second group of employees on such different terms and conditions that the groups were kept separated, as a lack of respect on the part of management for the role of the Union and the employees it represented. Therefore, the introduction of CSTs illustrated a tactical period in which adversarial relations intensified from a forcing towards an unrestrained forcing strategy.

The escalation of management's commitment to achieving their substantive objectives, perceived as achievable through a forcing strategy, induced development of the forcing strategy into unrestrained forcing. In this period the employer, according to some observers, decided not to negotiate with the Union but instead disestablished all firefighter positions. The Union purported that the employer would not negotiate terms and conditions with successful applicants but would unilaterally impose its desired contract. It would be a logical deduction to assume that the new fire officer contracts were to be based on the terms that management had spent several years trying to achieve, such as a 56-hour roster and the removal of penal rates. As such, this period can be perceived as a demonstration of management's commitment to these and other objectives, resulting in this more severe attempt at achieving their inclusion in a new employment contract. A key issue of dissent during the dispute related to management's desire to negotiate an entirely new contract while the Union wanted to negotiate using the expired contract as a base from which to progress. The employer could not change the contract without agreement from the Union, impelling management to determine ways of circumventing the legal requirement of agreement in order to obtain the desired contract.

According to Walton et al. (1994), an episode of unrestrained forcing generally leads to activities intended to overcome the effect such a strategy can have on the employment relationship. In some situations, an alternative may be to escape the relationship, but where the relationship is expected to continue there is usually a need to reconcile in order for future interactions to be worthwhile. The Fire Service Commission's decision to appeal the Employment Court's injunction against their modernisation plan and the subsequent decision of the new Commission to continue with the appeal process delayed the reconciliation process. This had a profound impact upon the ability of the parties to repair the damage inflicted on their relationship. An event such as a new senior management team can provide the impetus needed to diminish the distrust and wariness resulting from past interactions. In this case, a new

Fire Service Commission chair and chief executive could have utilised the opportunity to instigate a renewed relationship with the Union by emphasising that the new senior staff were implementing a break from the past. However, management continued with the Court of Appeal proceedings causing the Union to continue to distrust the employer's motives. Thus, the time taken to effect a change in the nature of interactions was prolonged until after the Court of Appeal upheld the injunction against the Fire Service. By waiting until after the Court of Appeal hearing, it appeared as though the Fire Service was resorting to a more conciliatory approach *only* after all other options had been exhausted and the ultimate attempt to achieve the coveted employment contract had failed. An alternative interpretation, however, may be that there were exogenous forces behind the decision to continue with the legal proceedings, and only then could the new executives effect a change in approach to contract negotiations.

The change in Government, with its associated philosophies and intentions, facilitated the eventual move toward a more conciliatory approach. The current strategy includes an element of integrative bargaining, such as problem-solving exercises and working parties to determine issues like the integration of CSTs and firefighters, and also an component of distributive bargaining. The distributive bargaining processes, however, are contrived by each party to obtain the most favourable share possible of the increased size of the 'fixed pie' achieved through cooperative problem-solving.

Thus, it can be seen that the contract negotiations between the Fire Service and the Professional Firefighters' Union commenced with the employer's decision to utilise a forcing strategy, which subsequently escalated into unrestrained forcing as successive attempts to obtain a flexible employment contract failed. Following the continued failure of increasingly aggressive tactics to achieve this objective, the parties tried to overcome the antagonism and dissension of past interactions and effected a more conciliatory approach to attaining their respective objectives.

7.2.2 Negotiating Processes

According to the theoretical framework guiding this study, negotiating processes both influence ongoing strategic choice decisions and are influenced by the chosen strategies. These processes include the actual bargaining process, or distributive and integrative bargaining, the management of internal differences, and the process of shaping intergroup attitudes (Walton et al., 1994). The three processes are highly

interrelated, where tactics contrived to influence one process can also have repercussions for the others. The preceding discussion of the dynamics of negotiating strategies delineated the nature of the distributive and integrative bargaining approaches inherent in the chosen strategies. However, these processes and strategies interacted with the negotiating processes of managing internal differences and shaping intergroup attitudes.

Managing Internal Differences

The hierarchical nature of management structures tends to provide an inherent system working to ensure a degree of consensus. The nature of accountability and subordination within organisational structures operate to facilitate the achievement of formal goals. This assists the process of managing internal difference within members of the employer's negotiating team and formal organisation. The data indicates attempts by senior management to disseminate the Service's strategic approach, for example, through internal memos and position papers. However, there remained some disagreement within managerial levels but this did not appear to have a significant impact on the official negotiating agenda.

...At one point the strategy was "we'll wipe them off the face of the earth," and that sort of thing. That was not a well-subscribed strategy, and in fact, it was not even a well-espoused strategy. But I believe it was the informal agenda (B. Joyce).

The period in which management's efforts to foster internal consensus and support for their strategy were most markedly weakened related to the period in which four senior executives resigned from the Service. This occurred in September 1997, whereby the chief executive, national commander and two regional managers resigned, citing reasons of personal conflict with the Service's new strategic direction and the nature of proposals to reform the Service. The national commander resigned because he felt that as a chief Fire Service officer, he should have been consulted over the new proposals instigated by the new Fire Service Commission headed by Roger Estall. The resigning managers believed that the plans would impact upon the Service's ability to perform its statutory duty and were based on the ulterior motive of cost reduction rather than an attempt to improve the Service. One could presume that, after such public

opposition from within its own ranks, senior management would likely increase their efforts to reduce internal dissent and cultivate support for the restructuring objectives.

It could be argued that differences within the formalised management structure are often subverted and have less of an impact on negotiations, particularly when bargaining representatives operate according to the direction of senior executives as in the Fire Service. Thus, for the most part management's efforts in the process of managing internal differences focused on tactics to create differences and dissent within the Union. The Union has voluntary membership without the formalised authority structures of management. Members of the executive committee and negotiations representatives are accountable to the membership, or those below them in the hierarchy, an order which is reversed in managerial hierarchies. Therefore, internal differences are more likely to be manifest in overt behaviour and the voicing of opinions. In order to effectively represent the entirety of its membership, unions require a significant degree of consensus of objectives and a cohesive membership. The efficacy of the Union's strategic choice tends to be contingent on whether they have the support of rank-and-file members (Gahan and Bell, 1999).

Within the overarching context of a forcing strategy, as indicated by management's strategic choice and the Union's response to the manifestation of that choice, the essential activities in managing internal differences relate to building consensus, solidarity, and cohesiveness.

...We have done an extremely good job of training our firefighters and one of the things that we train them in is very much the concept everybody's a team, the strength of working together and so on. One of the Union reps said to me not too long ago that our firefighters aren't good unionists but they are very good team people. And they have been able to hold that team together. As the firefighters have become annoyed with the management their look for leadership has moved toward the Union and with that teamwork that we built into them, and the team concepts and the work together, has worked in their interests of simply holding the fort... (B. Joyce).

Alternatively, if the parties were engaged in a problem-solving approach consistent with a fostering strategy, diversity of ideas might be encouraged in order to facilitate the development of creative solutions. However, as a forcing strategy dominated the majority of the dispute's duration, the emphasis was on building internal consensus and attempting to undermine consensus and instil dissent within the other

party. There are a number of ways in which Union officials explicitly encouraged unity within its membership, in addition to the benefits inherent in firefighters' training. Notices to members were regularly disseminated through local branches, keeping members informed and updated on progress in negotiations and other relevant matters. During the period in which Roger Estall and the Commission introduced the modernisation process, these notices concluded with the statement "unity is strength," in a type of firefighter mantra. During negotiations in 1996 the advice was "remember the slogan – fight the 56," referring to firefighters' opposition to a 56-hour roster. In some notices, the advice to members illustrated the more punitive nature of union membership. For example, a notice to members in January 1998 stated "to those of you who are lower than a piece of worm excrement, you have destroyed the trust that firefighters need in each other, you will never be accepted again!" According to Adam Pleydell, a former Union member, "there were circumstances when they used sarcasm or humour to make a point, and sometimes it does seem offbeat, but most of it is correct, especially from a worker's point of view." Other warnings included threats to inform all Union members of the names of those willing to "sell out" and accept individual contract offers from the employer. While one of the Service's employment relations advisors dismissed these notices as "propaganda," they served an important function within the negotiating processes.

A positive function of union governance was illustrated by the systems it had in place to protect members in times of industrial action. In March 1996, the Union collected donations from members around the country in order to establish a fund to support suspended firefighters if management's threats of suspension were enacted. Subsequently, five firefighters were financially supported until the parties negotiated their return to work. The Union also performed the social function of reducing the uncertainty and anxiety associated with threatened job security. The members could take comfort from that fact that 1500 to 1800 (depending on the stage of the dispute) firefighters were in the same position and provided social and psychological support for each other.

As negotiations progressed, the dynamics of management's strategic choices impacted upon the Union's need to maintain solidarity. As management's tactics become more aggressive, efforts to manage internal differences became more concerted and essential for sustaining resistance. For example, in 1996 the Union reiterated warnings to members that employer-generated rumours were tactics attempting to

destabilise the Union's unity. In 1998, however, the need to inform members of Union policy and limit internal differences assumed an element of urgency. When the Fire Service Commission announced its modernisation plan, the Union repeatedly warned members "by applying for any so-called new job you would be seriously jeopardising your legal rights." As the Union received further legal advice it became apparent that if members expressed an interest in applying for the new fire officer positions, it would indicate an acceptance of the modernisation proposal by employees. As such, the Union's efforts to inform members of these developments and possible consequences of their actions, the process of managing internal differences appropriated a greater role in the process of contract negotiations. When questioned about the Union's strength of unity and efforts to enhance this, the Union president replied that the employer made it easy for them.

The only reason - well not the only reason, but I'd have to say the main reason - why the Union is so united is because of such a bad employer that firefighters know they need protection, they know they need support and they know that the only way they can get that is through the Union (M. McEnaney).

...there's been the odd individual person, you know, who hasn't liked a particular strategy or a particular tactic. But at the end of the day I think we've had one member leave through the entire campaign and one member refusing to pay the increase in Union fees (M. McEnaney).

The voluntary nature of union organisation and issues associated with achieving recognition from employers emphasises the importance of solidarity during distributive bargaining, but it also induces management to engage in tactics designed to undermine that solidarity in order to advance their own agenda. These tactics were particularly evident during the Union's threatened strike action in 1994. Faced with the first possibility of full strike action in the Fire Service, management worked to break the membership so that they might not have to rely on contingency plans if the strike went ahead. The chief executive, Maurie Cummings, initially tried to drive a wedge between Union leadership and firefighters by announcing to the media that he believed Union leaders were manipulating members into holding a strike and, therefore, were to blame for putting lives at risk. It was also stated that the Fire Service believed that those people who had agreed to serve in the Fire Service would continue to do so, regardless

of the Union leaders' attempts to drive firefighters to strike. The employer's appeals to firefighters not to strike were supported by an ongoing advertising and media campaign warning the public of the possible consequences of firefighters' strike action. It is likely that these activities served to instil doubt regarding the strike in the minds of firefighters, and thus worked to offset the Union's efforts to manage internal differences and retain support for industrial action.

When CSTs were introduced in 1996, overt attempts were made to divide the Union membership and compel as many firefighters as possible to transfer to the CST contract. These included the offer of an \$8000 payment for senior firefighters to become CST leaders and to counteract the loss of pay associated with professionals transferring to the CST contract. The escalation of attempts to divide the Union's members mirrored that of negotiating strategies, whereby the forcing tactic to disestablish all firefighter positions was effected in conjunction with tactics to emphasise the threat of job losses to firefighters. The Fire Service Commission and senior management promoted the modernisation program in order to impel firefighters to apply for the new positions. Without applications from firefighters, it was unlikely that the Service would receive enough applicants to implement their reforms. The employer also tried blaming the Union for firefighters' hesitancy to accept the offer to reapply for their jobs. According to Roger Estall, the disappointing response from firefighters was due to the Union leaders' intention to frustrate the consultation by misrepresenting information to its members and issuing legal threats to the employer.

By contrast, the Union's attempts to undermine consensus within the Fire Service were less explicit, to the point where instances or examples of this process are difficult to pinpoint in the data. One such example, however, could be demonstrated in the Union's interactions with the employer's bargaining representatives. Throughout the duration of the dispute, the Union complained that the employer's representatives lacked the authority and mandate to negotiate effectively. Thus, they were told to go away until they could negotiate, and were described as management's "puppets." However, the effect that such interactions had on the employer's negotiating team is unclear. It is likely that the nature of their task to represent the employer's position to the Union was held in greater esteem and was of more importance than the Union's difficulties with the way in which that position was put forward. As such, management's tactics to undermine Union solidarity achieved a greater effect than those of the Union designed achieve the same effect within management.

According to Walton and McKersie (1965), the basis of conflict may not be entirely related to differences in preferences. It is proposed that differences in information and perception can also be a cause of conflict, serving to highlight differential objectives. As such, the management of information can facilitate the process of intraorganisational bargaining, or managing internal differences. The union can influence Union members' perceptions of the parties' bargaining positions and the differences between those positions. Union officials have the ability to act as gatekeepers to their organisation. In effect, this provides them with the means to influence and even manipulate the beliefs and interpretations of their constituents. A common complaint from the employer regarded its concerns that Union members were not receiving correct or complete information. Alternatively, this may have been a convenient justification for their attempts to undermine the Union leaders' authority and credibility as negotiators. However, it remains that the control and dissemination of information is a useful means of facilitating consensus or diversity in an organisation (Walton and McKersie, 1965).

Shaping Intergroup Attitudes

McKersie and Walton (1992) state that while attitudinal structuring is an important process in bargaining, it is less understood or less articulated than the precepts of their other bargaining processes. In this study, the nature of the data seemed to preclude a detailed analysis of the processes each party engaged to shape their constituents' attitudes toward the other party.

For the most part of the dispute, the Fire Service and the Union appeared relatively unconcerned about the increasing levels of intergroup hostility. They held directly opposing viewpoints, whereby the Fire Service wanted firefighters to work longer hours with fewer employees and the Union wanted the same hours of work, the same number of firefighters, and increased wages. The attainment of these objectives appeared most readily achievable through adversarial relations manifest in commitment tactics to influence the opponent to concede. Intergroup hostility facilitates this process, promoting the impression of commitment to a negotiating position. Both parties remained firmly committed to their positions; thus, it became inevitable that their hostility would heighten.

However, a formal and informal employment relationship could be identified, where the informal relationship worked to counterbalance hostility at the formal level. When asked to describe the nature of the employment relationship between Fire Service management and firefighters, Brian Joyce answered,

Generally diabolical. Having said that, I think that there is a formal situation, which is bad, and there are informal situations...I believe we have quite a good relationship here. In the 5 years that I've been back here, the Union and I have been opposed on some pretty severe and pretty strong issues, But we don't shout at each other and we manage those things we can manage and we step away from those things we're not able to... and try to keep as smooth a flow of work pattern as we can (B. Joyce).

Therefore, in analysing the process of shaping intergroup attitudes, it needs to be taken into account that they were not in force at all levels of the organisation. At the highest level, between senior executives and firefighters, relations were distanced and hostile. The firefighters' professed a distrust for the motives of management, while management argued during parts of the dispute that firefighters were lazy and resistant to any form of change.

The Union utilised media or corporate campaigns to further disseminate their views on the actions of Fire Service management. Such campaigns are designed to influence management through public relations and pressure from associated stakeholders, such as customers and shareholders (Cappelli, 1990). In the context of a public service, these campaigns are contrived specifically to incite public support for the Union and thus bring political pressure to bear on the employer as an entity of the elected government.

7.2.3 Negotiating Structures

Structural features influence the three negotiating processes, in addition to being influenced by those processes. They may complicate or enable tactical activity within the negotiating processes. The nature of structural features may be a matter of choice and thus are able to be manipulated to facilitate a chosen negotiating strategy, or they may be determined by exogenous forces (Walton et al., 1994). Where structure can be manipulated to advance a particular strategy, modifications are generally determined by the same considerations influencing strategic choice decisions. When external forces

beyond the parties' control determine structure, it is expected that this will influence the type of negotiating strategy pursued. Alternatively, where structure change be modified, they are shaped to support existing strategic choices, which have been influenced by other considerations (Walton et al., 1994). There are four structural elements impacting upon strategic negotiations, including the frequency of interactions and the channels of communication, the level of negotiations, degree of centralisation, and the number of parties involved in the negotiations.

Frequency of Interaction and Channels of Communications

The importance of the frequency of interactions between the parties comes in part from the traditional approaches to negotiations whereby the parties would meet periodically in formal negotiations. However, recent trends indicate a more continuous style of interaction (Kochan, 1992; Walton et al., 1994). The number of channels through which the parties communicate also holds consequences for negotiating strategies. These channels might be restricted to formal channels through bargaining representatives, or they may be more relaxed and informal, through daily or continuous contact. Limiting communications to formal channels involving bargaining representatives tends to be characteristic of traditional, arms-length collective bargaining (Walton et al., 1994). Limiting the nature of interactions to formal, periodic negotiations meetings further facilitates a forcing strategy. This works to interact with the processes of managing internal differences and shaping intergroup attitudes. A bargaining representative who meets representatives in formal negotiations is then responsible for informing members of the approach and position of the other party and can do so in a way that manipulates the attitudes of members. The Union often used this element of the negotiation structure to buttress their activities in creating and maintaining solidarity. Whether through intentionally subjective reporting or through the natural psychological processes of subjective interpretation and perception, the Union was often accused of misinforming their constituents regarding the employer's position. On the other hand, the employer advanced its own forcing strategy by limiting negotiations to formal channels through representatives from a lower level of the organisation. This frustrated the communications process due to the complexities of the channels through which the parties interacted, resulting in the representatives having little room to move from their prescribed bargaining position. This resulted in the employer's representatives making few concessions, as they were often required to

report back to their superiors to relay the Union's demands or request further directions or instructions.

Level of Negotiations

Traditional collective bargaining emphasised the importance of negotiating at the institutional level, whereas the ongoing search for flexibility has resulted in increased contracting at the individual level. The nature of the legislation governing the employment relationship, the Employment Contracts Act, was arguably enacted to increase the incidence of individual employment contracts. However, this legislation also contains provisions that can be engaged to protect the institutional level of negotiations. Thus, when the Fire Service attempted to offer a contract for firefighters to sign individually in 1992, the Union accused it of breaching the Employment Contracts Act by bypassing the Union as the authorised bargaining agent of the firefighters it approached. Given a more conducive context and a weaker union, the employer may have eventually succeeded in eliminating the Union from the employment contract. However, the 1995 *Ivamy* Employment Court and Court of Appeal rulings, in which the Fire Service first received then overturned an injunction against it, clearly set out the parameters within which management were required to negotiate with the Union. In doing so, one assumes the Fire Service took this advice into account as further strategies and tactics incorporated the Union, at least to a certain degree of participation, and no further suggestions of individual contracts were suggested for Union members. It can be argued that individual contracts were not the essential objective of earlier attempts, however, such contracts did indirectly achieve the aim of overcoming the Union's resistance to restructuring objectives.

Degree of Centralisation

The degree of centralisation relates to the level at which negotiations take place. It is a feature that may be modified in order to facilitate a forcing or a fostering strategy. Such modifications are generally based on considerations of bargaining power and are motivated by attempts to sway this balance in favour of the negotiating strategy. The Fire Service may several attempts to decentralise negotiations in order to advance its forcing strategy. The rationale disseminated was that it would foster flexibility and enable the Service's regions to negotiate working terms and conditions that best suited them, rather than expecting the entire Service to prefer and accept the same terms and

conditions. However, trying to decentralise negotiations was also a means of undermining the Union's bargaining power by dividing its constituents into smaller groups on a regional basis. As such, it would become more difficult for firefighters to resist unsatisfactory changes. This difficulty would increase if one region set a precedent by conceding to management's demands, thus undermining the unity of firefighters as a whole. The Union labelled the employer's repeated attempts as "divide and conquer" tactics, and warned members to resist approaches from their District Chief Fire Officers recommending regional contracts and negotiations. Management's attempts to implement regional bargaining are evident throughout the dispute, including an assumption in the 1998 "The Way Forward" proposal that the new fire officers would be employed on regional contracts. If the Union's assumption that the fire officer contracts, for which firefighters were expected to apply, were to be non-negotiable was correct, it illustrates the value of decentralisation to the employer. In contrast, the Union fought to retain centralised negotiations in order to retain a key source of bargaining power and strength. Within this structure, formal and periodic negotiations through institutionalised channels supported its use of distributive bargaining tactics to resist the employer's forcing strategy.

Number of Parties to the Negotiations

The number of parties to negotiations incorporates the dichotomy of dyadic or multilateral negotiations, whereby several parties or interest groups may influence the negotiation processes. Within the research context of the public sector, the influence of interest groups and stakeholders is likely to be more pervasive than in the private sector (Lewin et al., 1988). Due to reforms to governance systems in the New Zealand public sector, officials to whom the Fire Service is accountable do not have an official role to play in negotiations. The Fire Service Amendment Act (1990) gave formal responsibility for employment negotiations to the chief executive. However, this does not preclude such individuals and groups from trying to influence the processes and potential outcomes of negotiations. In some instances, the parties have lobbied other parties in support of their own strategies. The prime example of influencing the number of parties influencing negotiations, if not actually involved in them, is the Union's referendum process, which was designed to impose the public will upon the employer's negotiating approach.

7.2.4 Negotiating Outcomes

At the conclusion of this research, the parties were still engaged in negotiations to settle a collective employment contract. As such, several years of negotiations have not resulted in a ratified contract or outcomes pertaining to the formal attainment of substantive or social contract objectives for either party.

According to Kirkbride and Durcan (1982: 9), “it is...important to realise that the “outcomes” of power episodes are not “discrete” events that occur in a vacuum, but, instead, are located in a longer historical relationship. Thus, these outcomes need to be considered in the context of the past relationship, the asymmetries of resources, and also the way in which they reinforce or change the existing power balance.” The Fire Service and the Firefighters’ Union remain, after several modifications and alterations, situated within a power balance comparative to when the dispute commenced. One of the most interesting features of this dispute has been the Union’s ability to withstand the intensity of the employer’s forcing strategy by sustaining what Fells (1998) defines as an obstructionist strategy. Mike McEnaney, the Union’s president, attributes the Union’s strength to its people and their success in managing the negotiation processes, particularly the management of internal differences.

The second reason I think that makes us such a strong union, is...and we’re not a militant union, we’re very strong... is that all the people bar one on the national executive - and the whole Union is made up of operational firefighters or officers - we’ve only got one paid employee, that’s our secretary in Wellington. Everyone else is an operational firefighter or officer, and therefore they have an empathy with what happens, and therefore any decisions that are made affect them directly (M. McEnaney).

...I think the continual attacks from Government have made it easy too. You know, it’s made it easy because there’s been some good things to focus on when you’ve had people like...you’ve had ministers like Warren Cooper...because they’ve been so bad in their job and attacked firefighters so openly (M. McEnaney).

According to negotiations literature (e.g., Olekalns et al., 1996; Walton and McKersie, 1965; Walton et al., 1994), negotiations that are dominated by the use of distributive bargaining tactics are likely to result in distributive outcomes based on substantive items; while integrative outcomes, particularly social contract outcomes, are likely to be achieved when integrative bargaining predominates. This logical

assumption could enable the extrapolation of the nature of negotiations between the Fire Service and the Union, resulting in a prediction that the eventual outcome will be essentially substantive in nature. However, this could be moderated by the degree to which the parties engage in a problem solving approach in the future. When negotiations are dominated by distributive bargaining, it is considered essential that the negotiators work to avoid a conflict spiral leading to an ongoing stalemate (Olekalns et al., 1996).

7.3 The Relationship between the Duration of Negotiations and Strategic Choice

The preceding discussion of the “fit” of the data to the Walton, Cutcher-Gershenfeld, and McKersie (1994) model of strategic negotiations partly addresses the question regarding the nature of the relationship between strategic choice and the duration of a dispute. It has been established that the propositions of the model explain the characteristics of the case, particularly the dynamics within each strategic period or tactical episode analysed. However, this induces questions regarding the duration of the dispute, arguably as a result of the parties’ ineffectual strategic choices. In gaining an understanding of the temporal nature of strategic choice, one must consider not only the changes occurring in one party’s strategies, usually management as the initiator of change, but also the interaction between both parties’ strategic options and subsequent choices. The length of the dispute is thus a function of strategic choice and implications of those choices.

A consideration of pertinent factors leads to an initial strategic choice, the consequences of which, combined with further considerations of elements such as bargaining power and the perceived value of change objectives, directs subsequent strategic choice. After the initial choice, the process becomes cyclical in nature until a particular strategy is successful in achieving an agreement. This agreement may favour one party’s objectives if attained through the use of a forcing strategy based on coercive tactics, or it may be favourable, to a certain extent, to both parties’ interests if achieved through fostering or distributive bargaining with equitable concessions from both parties. Thus, strategic choices engender consequences affecting further choices and the effectiveness of negotiations. They also influence the nature of outcomes and have implications for the employment relationship and future interactions.

7.3.1 Strategic Choice Issues

According to Walton et al. (1994), the potential benefits of forcing are limited, where forcing can achieve some benefits but not others and a fostering strategy offers a contrasting pattern of potential benefits. But in the current era of competitiveness in which management has moved beyond negotiating within the traditional social contract, a forcing strategy appears to be considered most appropriate for achieving ambitious reform. Factors relevant to this case that contributed to decisions to force or foster change included the desirability of objectives, the expected response from labour, and a consideration of bargaining power in its many forms. The prime factor in determining the Fire Service's strategy appeared to be the nature of the change objectives. Management wanted to bring firefighters' terms and conditions into line with those of the general labour force, which had already experienced significant change. For example, the wider community had experienced the removal of penal payments for working on weekends, as working hours and pay rates became more flexible. Such developments typically occurred towards the end of the 1980s but the Fire Service and the Union agreed to rollover contracts, preserving the terms and conditions that are still in effect in 2000.

It's my personal belief that that was part of our damaging period, because that was done in the late 80s and there were a great deal of social changes taking place in the late 80s that the Fire Service wasn't keeping pace with by simply having a rollover contract. Things like changed attitudes towards time and a half and double time, and getting payments on Saturdays and Sundays, and things like that. Whether they were good things or not good things isn't the issue. The issue was society moved and the Fire Service didn't (B. Joyce).

Therefore, because changes in firefighters' conditions were not synchronised with those experienced in the wider community, the Fire Service's attempts to instigate such changes became of a transformational nature rather than implementing evolutionary or incremental changes. The employer's objectives became quite ambitious and aggressive relatively quickly, reducing the likelihood that the Union would accept the rationale behind the changes. However, once aware of the nature of management's agenda, it also becomes more likely that the Union would respond negatively to any fostering initiatives from management (Walton et al., 1994). Such overtures would probably be viewed with distrust, with employees realising they could

be a subversive attempt to seek changes disadvantageous to their collective interests. Furthermore, fostering initiatives become increasingly hard to propose and implement as negotiations progress, particularly if preceded by a forcing strategy as in the Fire Service dispute. Certain tactics tend to precipitate increased forcing or unrestrained forcing and therefore make subsequent fostering efforts difficult, if not impossible. Parties engaged in conflict are expected to adjust their actions not only to the situational or structural context, but also according to their expectations of how the other party is likely to respond to this context (Bacharach and Lawler, 1981b). Thus, within each strategic period or after significant tactical activity, management is faced with the choice of continuing the traditional work patterns, forcing change, fostering new conditions, or engaging in a combined strategy, which may be favourable to both parties (Walton et al., 1994). These choices continued to be influenced by the nature of management's objectives, the union's expected response, and perceptions of the balance of power. Subsequently, negotiators evaluate both their own and their opponent's tactical options and try to anticipate those the opponent will choose to engage (Bacharach and Lawler, 1981b). The Fire Service's objectives remained relatively unchanged throughout the case, as did expectations of labour's response. Those objectives were driven by a degree of economic necessity borne out of externally imposed budget restrictions. They were also fuelled by the ideological or philosophical beliefs of individuals in the positions responsible for leading the reform programme. Furthermore, a negotiating team is comprised of a number of players, each with their own personality, beliefs, and negotiating style. As such, it is to be expected that the characteristics of negotiators and leaders will also impinge upon the effectiveness of negotiations. It has been suggested, by those involved in negotiations and observers, that at times during the dispute it appeared that individual agendas might have distorted the true nature of the issues being negotiated. Some members from both negotiating teams have endured a substantial period of the dispute, if not its full term. This would suggest that the parties have well-established relationships that are based on the distrust and adversity inherent in their diametrically opposed positions, in terms of both agendas and positions at the bargaining table.

Time perspectives are also considered to influence strategic choice. In cases where an employer wants to implement the change objectives as soon as possible, it is more likely to involve coercive attempts to force a union to accede, as other methods of initiating changes may be considered too time consuming (Tedeschi and Bonoma,

1977). A fostering strategy based on integrative bargaining tactics needs to be based on a relationship of trust; if the employment relationship is not based on trust then to develop a context in which integrative bargaining would achieve mutual objectives would take a considerable amount of time. A further way in which the concept of time can impact upon strategic choice dynamics is through a contraction of the perception of time. In this sense, a party might restrict their strategic considerations to the current context and fail to contemplate the future consequences of their actions (Tedeschi and Bonoma, 1977).

After an initial forcing strategy did not achieve the employment contract needed to implement organisational restructuring, the Fire Service made a subsequent decision, based on the aforementioned factors, to continue forcing. However, the renewed forcing effort took the form of trying to undermine the Union's leadership of its members by disseminating information regarding the fairness of the employer's contract offer and implicitly accusing the Union of intransigence to its members detriment. In turn, however, the Union made great use of the Employment Court system, resisting the employer's tactics by seeking several injunctions restraining the Fire Service from implementing their plans. This is a tactic typically initiated by management to impede industrial action (Evans, 1987), and illustrates that the Union acknowledged that the power of economic sanctions associated with strike action had diminished and subsequently sought superior means of resisting the employer's tactics.

7.3.2 The Paradox of Forcing in Negotiations

According to Tedeschi and Bonoma (1977), the use of coercion is antithetical to the structure and function of a bargaining relationship. When the parties to a bargaining relationship are relatively equivalent in terms of bargaining power, coercion can escalate conflict and thus become counterproductive for both parties. Thus, norms and rules may be implicitly or explicitly agreed upon in order to protect oneself from the ability of the other to inflict damage. Thus, the mixed-motive nature of bargaining results in the establishment of parameters within which the parties will influence each other in pursuit of the most favourable agreement. It is also argued that coercion is not usually a preferred means of influencing an opponent because of the inherent risks of escalation. Thus, coercion tactics, particularly in unrestrained forcing, tend to be a measure of last resort (Tedeschi and Bonoma, 1977). The Fire Service originally applied distributive bargaining tactics based on persuasion, manipulation, and even

bribery. However, when these were met with undeviating resistance from the Union, the employer's tactics became increasingly coercive with the implicit agenda of undermining the Union's strength and organisation of the workforce as a form of punishment for its insurgency.

A distinction can be made between conflict and competition, in which competition is a broader concept incorporating conflict. Both concepts involve an element of goal incompatibility, however, in competition the pursuit of goals does not interfere in the other party's attainment of their goals. In situations of conflict, the interdependency of the parties' actions in pursuing their goals precludes the ability for both to achieve their goals, particularly when the actions of one party block those of its opponent (Kochan, Huber, and Cummings, 1975; Schmidt and Kochan, 1972). Schmidt and Kochan (1972) concur with Tedeschi and Bonoma (1977) by stating that organisations typically seek to prevent incompatible goals and preferences from developing into overt conflict. However, it is the perpetual interference in the other party's activities that results in a prolonged impasse. As a party is continuously confronted with such opposition, it becomes apparent how negotiations can escalate into unrestrained forcing based on coercive attempts to surmount the obstruction of an opponent's resistance

7.3.3 The Effect of Coercive Tactics: Resistance and Reinforcement

If a party's threats are to be taken seriously or believed by the other party, they must be perceived as having the means to carry enforce the punishment inherent in the threat. This is one of the main reasons why the Union was able to resist the increasing force of the employer's threats for such a long time. The Employment Contracts Act, which was arguably based upon an ideology favouring employers' interests, actually worked to undermine the Fire Service's ability to execute most of its plans to circumvent Union opposition and achieve its objectives. According to a Fire Service manager, the Union's ability to resist was based on the identification of legal factors supporting its position, as demonstrated by the recurrent use of injunctions to oppose management's actions.

I believe the Fire Service Union is the only union that found the strength of the Act. Everybody else argued about the weaknesses of it. And they are still sitting there...they've got a very old contract and they may not have had a pay rise in 8 years...but that's a bit of a

lie too, because there are several conditions in the contract that they are still working to that mean they're not earning the same as they were 8 years ago. You know, staff numbers have gone down and the overtime requirements gone up, and so they're not earning what they used to in 1982. But that's part of the rhetoric. They've played their hand really well. Over the years the management have changed strategies quite a few times (B. Joyce).

The Union was not restricted to passively resisting the employer's attempts to coerce change, but was able to engage retaliatory countertactics devised to forestall further coercive tactics. As a result, the parties found themselves immersed in a self-reinforcing cycle of forcing tactics and countertactics that culminated in unrestrained forcing. Thus, the opportunity costs associated with a forcing strategy can be considerable given the possibility of escalation. Commitment tactics tend to preclude the option of achieving a mutually favourable agreement, focusing instead on the potential to achieve one's outcomes within a zero-sum context, to the detriment of the other party (Tedeschi and Bonoma, 1977).

There are a number of reasons why the Fire Service may have chosen to negotiate a contract within a forcing strategy despite the potential risks. Based on the data, a plausible explanation would suggest that the Fire Service did not expect or predict the Union's continued resistance, their sheer determination and ability to resist, or that negotiations might degenerate into unrestrained forcing. The intense conflict resulting from the tactics and countertactics influenced the likelihood and nature of further tactics. According to Tedeschi and Bonoma (1977: 229) "intense conflict in which the goals are incompatible, interdependent, and vital to each party breeds suspicion regarding motives and trustworthiness and reduces the effectiveness of positive modes of influence, such as promises, persuasion, or moral exhortations."

While some of the Fire Service's tactics and the Union's countertactics may not appear overly coercive when justified by each party, an analysis of the underlying objective and motives can betray this impression. An individual or group who considers using coercive or autocratic tactics is generally aware that such behaviour would engender social implications, such as being labelled an aggressive or tyrannical employer. Particularly strong tactics are often accompanied by a rationale for their use to avoid censure. Thus, coercive behaviour becomes less explicit, whereby behaviour can be justified but conceals ulterior motives. Similarly, Robinson and Friedman (1995) found that an individual or party might present a social account, or a verbal

strategy contrived to persuade an audience that a perceived wrongdoing was not an accurate account of actual events or a fair representation of the individual or group's true nature. This may include a causal account, whereby external forces are primarily to blame for the wrongdoing.

The Fire Service Commission's proposal to disestablish firefighters' jobs can be used as an example of this type of behaviour. The Commission provided the rationale that the only equitable way to determine who should be employed in the reduced fire officer force was to receive applications from all interested parties including current firefighters. From the employer's perspective, this was a reasonable means of ensuring fairness in the process of implementing the new role of Fire Service employees. However, from the employees' perspective, this was an underhanded means of circumventing the obligation to consult and negotiate, and therefore allowed the employer to unilaterally impose the employment contract it coveted. It was perceived within the context of several years of ineffectual negotiations characterised by increasingly astringent attempts to negotiate a favourable employment contract and the ability to restructure the workforce.

7.3.4 The Risks of a Forcing Strategy

The theoretical model of Walton et al. (1994) propounds that serious consequences may arise from choosing to pursue an initial forcing strategy. The nature of the processes involved in distributive bargaining, particularly the emphasis of hostile attitudes in order to give the impression of immovability can lead to successive forcing strategies. As this progression occurs, a party might experience an escalation of commitment, heralding an unrestrained forcing strategy and rapidly diminishing chances for moderating the antagonistic nature of the employment relationship.

Escalation to Unrestrained Forcing

One of the greatest risks of a forcing strategy is the potential for it to escalate into unrestrained forcing. Decision-making research has found that individuals and groups who are responsible for negative consequences commit increasing amounts of resources to a failing course of action (Bazerman and Neale, 1983; Schwenk & Tang, 1989). Using the conclusions of escalation literature, it has been argued that negotiators can escalate their commitment to a previous course of action (Bazerman and Neale, 1983), even in the face of evidence that it is likely to fail. This can be the result of a

number of factors, including the negotiators' need to justify their initial commitment to themselves, their constituency, and external groups. Escalation may be exacerbated by cultural norms perpetuating the idea that good managers and leaders should be consistent and remain committed to decisions once made (Schwenk and Tang, 1989).

This emphasises the impact of an initial choice to force change objectives. Distributive bargaining processes tend to emphasise the need to establish high initial demands and establish commitment to those demands in order to persuade one's opponent to concede. Conceding or backing down from a committed position can result in loss of face, bargaining power, and credibility. Thus, it becomes easier to adopt a nonrational committed position than incur such consequences. Furthermore, negotiators have been found to become increasingly unwilling to accept their opponent's arguments as negotiations progress, resulting in the demarcation of the limits to negotiations early in the process (Olekalns et al., 1996). This phenomenon is further aggravated if there are losses incurred in failing to reach an agreement, such as a strike or lockout, or if commitment to a particular position has been publicly announced (Bazerman and Neale, 1983).

The Negative Orientation of Union Responses

Fells (1998) highlights that the Walton, Cutcher-Gershenfeld, and McKersie model prescribes what is essentially a "managerialist" of the negotiating process. Within this model, management is recognised as the driving force behind organisational change initiatives that may impact upon the negotiations of an employment contract. In contrast, however, the Union has been assigned the role of responding to such initiatives. If these are perceived as being detrimental to employees' interests then the alternative to negotiating is to resist such initiatives by frustrating the change process. It is a negative orientation that begets these actions, whereby a union's strategy becomes predominantly obstructionist in its attempt to avoid unfavourable changes. Inherent in the nature of such a strategy is the supposition that a negative orientation and obstructionist approach are merely resistance tactics and will not work to advance the union's objectives in negotiations. Consequently, negotiations can result in a cyclical stalemate in which management attempts to advance their change objectives only to be met with the union's countertactics to resist management's endeavours without promoting their own goals to any great extent but with the effect of inducing management to try a different tactic. As the distributive bargaining process progresses,

the parties become more committed to attaining their goals. The escalation of a party's commitment to their objectives resulting in increasingly coercive and adversarial tactics also has wider implications for the employment relationship beyond the process of negotiating a new collective contract. These include a resultant legacy of distrust that can affect many aspects of organisational performance beyond the negotiating relationship.

7.4 Conclusion

This chapter follows the chronological case analysis in chapters four and five by addressing the research questions that form the basis of this study. The research questions refer specifically to the ability of the Walton, Cutcher-Gershenfeld, and McKersie (1994) model to explain a context differing to that from which it was developed. In other words, this question serves to extrapolate the applicability of the theory to a context of extended negotiations, whereby the parties are engaged in an ongoing industrial dispute. It has been elucidated that the model does, in fact, explain the dynamics of such a context and that its propositions remain relevant in explaining the characteristics of negotiating in such a context. Furthermore, this chapter considered the nature of the relationship between negotiating strategies, factors affecting strategic choices, and the duration of the dispute. Findings indicate that initial strategic choices have an impact on subsequent choices and also affect the outcomes of those choices. Effectively, the nature of strategic choices influences the effectiveness of negotiations and the quality of outcomes, including the outcome of impasse.

Chapter 8.

CONCLUSION AND IMPLICATIONS

8.1 Introduction

This chapter concludes the study with a broad overview of the research and the resultant findings. With respect to the research questions, it has been established that the framework of Walton, Cutcher-Gershenfeld and McKersie (1994) can be extrapolated to the context of a protracted industrial dispute. The processes of the model's interaction system and propositions for strategic decisions are effective in explaining the dynamics and characteristics of a long-term industrial dispute. This is of particular interest given that industrial disputes spanning several years are relatively rare occurrences. However, they present a social phenomenon pertaining to the nature of conflict and consensus, and therefore, understanding the nature of such disputes is beneficial to both practice and policy.

There are a variety of implications ensuing from the case findings, pertaining to industrial relations practice and policy. The investigation and explanation of strategic choice dynamics may have an impact on those pursued in other cases of negotiations. For example, the Fire Service case illustrates the risks associated with initiating a forcing strategy and the implications this has for future strategic choices. Implications for policy include findings relating to government and employer industrial relations policy. These are somewhat interrelated, as it has been suggested that the Government acts as a model on which the private sector can base their own employment relations policies. Furthermore, the contentious and prolonged nature of the Fire Service industrial dispute is argued to have implications for good faith bargaining policies and disputes resolution procedures.

The chapter concludes with a consideration of the limitations of this research and proposes directions for further research in the area of strategic negotiations and the wider field of industrial relations.

8.2 Research Conclusions

The purpose of this study was to consider the applicability of extant negotiations literature, with particular reference to the work of Walton, Cutcher-Gershenfeld, and McKersie (1994), to the phenomenon of a protracted industrial dispute. In addressing this topic, a prime issue of interest was the relationship between strategic choice and the duration of the dispute. In essence, negotiating strategies guide the ways in which the parties to negotiations interact with their opponent in order to achieve their objectives. While there are many factors influencing negotiation outcomes, it can be argued that the strategies with which the parties' choose to approach negotiations have a profound impact on their success and effectiveness. Thus, it follows that failure to produce outcomes in the forms of an agreement or contract is a consequence of strategic choice. An extended period of failing to reach an agreement indicates impasse or a deadlock, which the parties' generally strive to overcome in the pursuit of their objectives. This is expected to have an effect on strategic choice, as the parties would adopt the strategy, within any constraints acting upon this choice, that they predict to be the most effective in obtaining outcomes favourable to their respective preferences. Thus, the relationship between strategic choice and the duration of an industrial dispute is not considered to have a one-way effect, but strategic choice and dispute duration are theorised to influence each other.

The Walton, Cutcher-Gershenfeld and McKersie (1994) model has been applied to the Fire Service industrial dispute and effectively explains the processes and dynamics illustrated in the case. Most of the theoretical propositions derived from the model can be identified in the case. For example, most of the tactics used by the parties were consistent with distributive bargaining within a forcing strategy (Walton and McKersie, 1965; Walton et al., 1994). The propositions of the Walton et al., model also accounted for the parties' activities designed to influence the processes and structure of negotiations. For example, both parties acted to manage their internal differences in order to facilitate their bargaining tactics. This process of intraorganisational bargaining works to build and maintain support for an organisation's goals while discouraging dissent and conflict (Walton and McKersie, 1965). A further process pertaining to shaping intergroup attitudes, or interorganisational bargaining, is also conducted in ways conducive to negotiating strategies and also interacts with the intraorganisational

bargaining process. Therefore, the parties, and the Union in particular, maintained a consistency and “fit” between their negotiating strategies and the processes relating to the actual conduct of negotiations.

The Walton et al. model also proposes a relationship between structure and strategy, whereby a party is expected to manipulate the structure of negotiations in order to facilitate the prevailing bargaining strategy. This effect is apparent in the attempts of Fire Service management to decentralise negotiations to the regional level. The justification supplied for this suggestion was predicated on the argument that it would be favourable to both the organisation and employees’ needs. Negotiations at the regional level for contracts covering employees in that region offered the flexibility to focus on its unique needs and resources. The rationale also proposed that regional employment contracts would enable fire brigades to adapt their working practices to better meet the needs and risks in the communities they served. However, possible motives underlying these suggestions were based on the likelihood that regionalisation of negotiations would diminish the collective strength and unanimity of the Union. A further structural proposition was demonstrated as the deadlock in negotiations extended, whereby the parties also worked together to establish structural features enabling a more effective negotiations process. A recurring complaint from the Union regarding the level at which negotiations were taking place resulted in changes to the composition of the employer’s negotiating team.

From the preceding examples, it can be concluded that the model of Walton, Cutcher-Gershenfeld, and McKersie (1994) can be extrapolated to a context within which two parties have been engaged in negotiations for an extended period of time. However, it was also questioned if, given that the model explains the negotiating processes and dynamics, it could contribute to an understanding of the temporal dynamics of the case, or why negotiations resulted in impasse for such a long period.

There are a number of facets to addressing this issue and as the model is not highly prescriptive, it accounts for many of them. In any dispute the unique context, characteristics of the parties, and external influences will all play a fundamental role in determining negotiations outcomes. As such, a model of negotiations, in order to explain the nature of its processes, needs to maintain an element of flexibility in order to apply to a range of settings. The Walton et al., model recognises this attribute of

negotiations and its propositions allow for the moderating influence of other variables. The exceptionally complex interplay of internal and external forces impacting upon contract negotiations in the Fire Service preclude the identification of a specific factor or dynamic responsible for the duration of the dispute. Rather, the continual impasse was the result of the interplay of several factors; the perspective of the observer influences how the significance of these factors is conceptualised. For example, the Fire Service might blame the Union's intransigence and unwavering resistance to change, accusing it of clinging to employment relations practices and ideas predominant decades earlier. In contrast, the Union might blame the employer's constricted impressions of the best way to improve efficiency in the Fire Service and their reluctance to take firefighters' suggestions into account. Both of these perspectives influenced the strategies of the respective parties; the Union resisted every attempt to instigate change while the Fire Service perceived a forcing strategy as the only way to effect change so explicitly, yet illogically, resisted. However, these elementary initial choices initiated an elaborate interaction between strategic choice, negotiating effectiveness, and outcomes – moderated by external influences such as third party intervention or lobbying, externally imposed budget cuts and ongoing public sector reforms. As the consequences of initial strategic choices were played out and subsequent choices adapted accordingly, the ability to supersede these forcing strategies with a fostering strategy decreased, arguably in proportion to the period spent engaged in adversarial interactions.

8.3 Implications for Practice

8.3.1 Choice of Negotiating Strategies

The dynamics of strategic choice within an industrial dispute have wide-ranging implications, including effects on the employment relationship, organisational commitment, and the nature of future interaction and negotiations. These implications are exacerbated by the duration of negotiations, particularly if, as in the case of the Fire Service, negotiations witnessed an escalation of the parties' commitment to a predetermined course of action.

An organisation's work practices are contingent upon the style of management

that is given more emphasis, or the focus on commitment or control strategies (Walton, 1989), and social contract or substantive outcomes (Walton and McKersie, 1965). One of the primary aims of the Fire Service was to improve productivity, however this was pursued through the means of changing the nature of the employment contract. The economic nature of employment contracts does not govern all aspects of employee behaviour and conduct. According to Blau (1964), only social exchange tends to engender feelings of obligation and trust, whereas purely economic exchange as such does not. In emphasising the economic nature of the employment relationship, management risk suffering the effects of disloyalty and antagonistic relations with their staff. A relationship based on trust allows organisational members to operate not simply by the letter, but also the spirit of the employment contract, in terms of both economic and social obligations. Fostering social exchange allows management to develop more complex relationships with their employees, thereby reducing the need for monitoring compliance with the contract. This also enables the parties to benefit from more flexible and less expensive work arrangements (Brenkert, 1998).

Trust involves an attitude, towards people or institutions, which constitutes a willingness to place oneself in situations in which one is vulnerable and where there is an element of risk because other people then have the ability to harm goods or interests about which one cares (Brenkert, 1998). In an organisational context, trust refers to confidence in employee competence and in their commitment to a goal. From the employees' perspective, trust is confidence that the interests of shareholders or management will not necessarily take precedence of the interests of employees (Hosmer, 1994). Coordination of employee behaviour requires the both acceptance and legitimation of authority. Coercive forms of authority and management can lead to resistance and even active opposition (Blau, 1964; Boxall, 1995). Social mechanisms of controlling employee behaviour that facilitate the legitimation and acceptance of authority and organisational goals are not so obtrusive or explicitly manipulative. While it may not be used deliberately, social control can work to direct and motivate employee behaviour. Fox (1974: 339) states that "in a world context of accelerating change ... an increasing premium will be placed on flexibility, adaptation, problem-solving, and creativity." These values and skills are most readily achieved in work situations characterised by trust, open communications, and high individual

involvement. This promotes the value of integrative bargaining within a fostering approach to negotiations with employees.

The Fire Service attempted to promote flexibility and increase the efficiency of employees' work practices and systems within a context of distrust and animosity, while placing emphasis on the economic benefits to be gained through doing so. Thus, as employees question if they are being exploited and their effort undervalued in the pursuit of cost reduction strategies, trying to force productivity may prove exceptionally difficult. Boxall (1993:161) indicated that "in certain cases, it is clear that sections of the workforce have been alienated by the bargaining stance of their employer, and that worker organisation and determination to resist have been strengthened." The increasingly power-oriented and coercive style of management has been labelled "macho management" and is considered a manifestation of the intensification of the market economy (Denham, 1991). Consistent with Walton's (1989) control strategy, this style of management is illustrated by the use of casual rather than permanent employees, the increasing use of legal injunctions in industrial disputes, and a gradually increasing trend towards the deunionisation of workplaces (Denham, 1991). Thus, this "macho" management style characterises the Fire Service's approach as a common theme is objectives to reduce staff or introduce fundamental changes to work practices quickly and unilaterally.

Recent trends of restructuring large organisations, outsourcing functions, and implementing flexible work practices have been argued to affect the psychological contract with employees and can create problems for organisational commitment (Honeybone, 1997). The Fire Service traditionally had a quasi-militaristic structure, whereby managers were usually promoted through the ranks and loyalty to the organisation was very strong. However, as the public sector was identified as requiring reform, professional managers were hired specifically to implement reform and manage the new structure. However, these managers typically lacked the operational experience firefighters believed were essential for management in the Fire Service, and so they felt the new style of manager lacked the ability to understand the nature of frontline operations. While firefighters remained committed to their jobs and the service they provided to the public, which was considered more of a vocation than a job, they began to lose trust in management.

[In the early 1990s] ...for the first time they brought in a chief executive who'd never been an operational firefighter, who'd never been in the Fire Service. They brought a guy called Maurie Cummings in, who'd actually been in the police and then he'd gone to Telecom and then he'd gone to ACC, then he come to the Fire Service. He sort of brought a group of people with him and their approach was then one of, yeah, very confrontational and dictatorial in terms of what they were going to do because they didn't really have an understanding of the Fire Service culture, I suppose. Whereas we'd had chief executives and senior managers before, they'd been Fire Service people so they knew what the Service was about and what was required. Leading up to that there was always some criticism that - and I agreed with it too - that a good fire officer doesn't necessarily make a good business manager. But I think in terms of understanding the Fire Service and what goes on and the culture of the Fire Service, it far outweighed any deficiencies in that business management. And what the Service needed to do was they needed to get their people and probably train them a little bit better in business management. (M. McEnaney)

While research into commitment does not distinguish between employee commitment and organisational commitment, Harcourt and Keef (1998) found that firefighters in the New Zealand Fire Service were significantly more committed to their fellow staff and the organisation than to senior management, thus differentiating between certain constituencies and the organisation. The lack of trust in non-operational management was exacerbated by the nature of the restructuring proposals first introduced in 1994, followed by a procession of equally opposed proposals throughout the 1990s. The attainment of flexibility by imposing change is not considered conducive to quality employment relations, where one party has enough power to overwhelm the other into submission (Honeybone, 1997).

There is a general belief that an emphasis on cooperation is needed to deal with a rapidly changing economic environment (Perline, 1999). In order to maximise cooperation, management would need to take a more consultative and trusting approach, while unions may need to relinquish traditional bases of power in order to foster the exchange of information and increase employee participation in decision-making (Kochan *et al*, 1984). However, a move towards more cooperative interaction in the Fire Service would require a reconsideration of the perception of managerial

prerogatives. There is an inherent conflict between management's right to manage and employees' need to participate, to some extent, in decisions that impact upon their work. This conflict is typically viewed as a zero sum game, whereby as the union increases its participation, management loses its prerogative to manage as it sees fit (Perline, 1999). However, it may be possible to reconceptualise the managerial prerogative, as it has been argued that union's rarely aim to achieve ownership or control, but instead, are more interested in protecting members' rights and preserving their role in the employment relationship (Perline, 1999). Thus, a cooperative approach to problem-solving and integrative bargaining may achieve a degree of consensus regarding the parameters of employee participation and managerial control.

Chamberlain and Kuhn (1969) proposed that one of the most significant barriers to reaching an agreement on divergent preferences that would enable a cooperative approach is a fear of cooperation. This seemingly paradoxical fear is predicated on the consideration that the potential dangers of integrative bargaining might outweigh the potential benefits. The danger lies primarily in the need to divulge and exchange information; an activity that enhances a party's vulnerability (Walton et al., 1994). If the parties have been negotiating in a distributive manner prior to considering a cooperative approach, then this vulnerability is emphasised as it could be used as a weapon if the parties subsequently resume distributive bargaining. As such, managers are likely to fear a loss of their prerogative, while union leaders may fear cooperation with management could render their role and office unnecessary.

8.3.2 Choice of Negotiating Tactics

The study of the Fire Service dispute enables consideration of the types of tactics utilised in an ongoing industrial dispute and their implications for collective bargaining. Two key themes derived from this research may indicate or give weight to trends developing in the utilisation of negotiating tactics. For example, the case highlights a move away from the use of strike action, which is becoming a less powerful means of obstructing the impetus of employers' change objectives. It also demonstrates the use of more creative and versatile tactics aimed at impeding specific employer actions, such as the seeking of legal injunctions.

The Use of Strike Action

The dynamics of the Fire Service case present interesting implications for the use of industrial action in disputes. It has been argued that the strike is no longer an effective means of gaining concessions from an employer regardless of the sector or political processes involved in the dispute (Walton et al., 1994). For example, If the employer is able to hire a replacement workforce, the strike is rendered a redundant and futile tactic. In the context of current employment relations policy and practice, an employer could hire a replacement workforce with minimal remonstrance or significant consequence. The strike is essentially a temporary refusal to work, with the aim of evincing employer concessions but without the expectation of terminating the employment relationship (Flanders, 1970).

It has also been suggested that public sector unions are able to engage in industrial action wielding more force and influence than those in the private sector, as the nature of public services typically makes non-provision more inconvenient (Cohen, 1988). However, this case indicates that strikes are becoming less influential in industrial disputes despite the sector in which they may occur.

According to the individuals interviewed for this study, the Employ Contracts Act provides a means of resisting change far greater than that of industrial action. The Act is based on the notion that if changes to an employment contract are not negotiated, the *status quo* prevails. While some unions have chosen to strike when faced with aggressive demands from management, the Firefighters' Union realised that in striking they would face a greater risk than if they merely refused to agree to contract changes. This strategy had a relatively negative orientation in that it did not advance firefighters' need for a pay increase, but it effectively avoided the consequences of management's change objectives. Thus, by *not* striking, the Union successfully frustrated the employer's attempts to negotiate a more flexible contract and obtain the employees' acceptance of organisational restructuring.

This characteristic of the Union's relatively obstructionist strategy could have significant implications for the process of collective bargaining in the workforce. For example, the president of the Firefighters' Union stated that he could not understand why the Airline Pilots Association representing Ansett pilot decided to take strike action

in order to defend their existing employment contract and work practices, when the ECA implicitly defended those conditions for the pilots. A future trend may find an increasing number of unions adopting a similar obstructionist approach, whereby they simply refuse to agree to the terms and conditions sought by management rather than threatening industrial action. This would be to the detriment of objectives to enhance employees' pay and benefits, but it may be considered a less costly or risky option given the ambition of management in demanding concessions.

The Use of Injunctions

During the Fire Service industrial dispute, the majority of legal tactics, such as filing for injunctions, were initiated by the Union. Seeking injunctions became a principal means by which the Union could delay, obstruct, or prevent the employer's various methods of implementing its restructuring plans.

British research regarding the use of injunctions in industrial disputes has found that the employer was the party most often seeking injunctions. British employment legislation introduced in the early 1980s restricted the legal justification for industrial action, subsequent to which, employers sought injunctions to stop unlawful strikes and industrial action in accordance with the new laws. For example, the new laws prevented employees from engaging in secondary strikes or boycotts but these continued after the enactment of the new legislation (Evans, 1987). However, much of the research on the use of injunctions is predominated by studying how employers use injunctions to prevent their workers from taking strike action (Gall and McKay, 1996). This happened on one occasion during the Fire Service dispute, when management argued that as an essential service they had not received enough notice to ensure adequate contingency plans were in place in the event of emergencies. Beyond this, most of the injunctions were initiated by the Union and related to the employer's failure to negotiate or consult, and alleged bypassing of the recognised bargaining agent.

Gall and McKay (1996) noted that employers appeared to be increasingly reluctant to seek recourse to the law to prevent employee strike action, instead preferring to utilise the collective bargaining process and consultation for dispute resolution purposes. This preference is predicated on the belief that these resolution procedures are less likely to prolong the dispute and alienate employees than instigating legal proceedings and taking their employees through the court system. In contrast, the findings of this case illustrate that the Union utilised a tactic that had largely been engaged by employers, finding that it worked in their favour to prevent non-negotiated changes to the employment contract and working conditions. Fire Service management, however, were less likely to initiate legal proceedings against the Union but were willing to seek an appeal if they felt the Employment Court had not ruled fairly or in their favour. While employees and their unions may view using the law as a means of influencing the balance of power, particularly given the relatively hostile nature of the

Employment Contracts Act, the increasing use of injunctions in industrial disputes has serious implications. The length of time and cost associated with filing proceedings and progressing through interim and substantive hearings may unnecessarily prolong a dispute or conflict that may have been better resolved through alternative procedures. Furthermore, using the law to prevent employees or employers from taking certain action is inherently adversarial and antagonistic, and therefore can have profound effects on the nature of the employment relationship. The publicity associated with court hearings can also serve to entrench the commitment of each party to their position and a particular course of action. Both of these factors have implications for the ability to initiate alternative resolution methods after the use of legal proceedings. For example, a bitter court case may impact upon the inclination and ability of the parties to engage in successful mediation or joint problem-solving processes in order to resolve their conflict.

8.3.3 The Role of the Union in Employment Relations

The findings of this case also hold implications for the role of unions in collective negotiations. In what is generally considered to be a hostile environment to trade unions, the dynamics of this case demonstrate the ways in which a union can maintain its resistance. However, one should not make the assumption that unions will generally seek to resist management initiatives. But in contexts where employees and their union disagree with the nature of the employer's negotiating objectives or proposals for change, this case demonstrates that a union can sustain its bargaining power and resistance.

The nonprescriptive nature of the Employment Contracts Act has presented employers with the opportunity to eliminate or diminish the presence of unions in their workforces. For example, employers can pursue individual employment contracts, decentralised bargaining to undermine the unity of the collective, and can freely exercise influence over employees' decisions to join a union. Combined with a widespread ideological perspective propounding that managers should be able to exert their managerial prerogative in managing as they see fit. This perspective tends to deny unions a role in organisational decision-making and can have adverse consequences for their ability to successfully negotiate an employment contract.

However, the Fire Service industrial dispute has resulted in the identification of tactical responses that unions can use to counter the more subversive tactics some employers attempt in negotiations. For example, the Firefighters' Union exploited the nature of the legislation considered to favour employers' interests to subvert the attainment of those interests. However, using tactics such as seeking injunctions and taking a dispute through the courts is a costly exercise that some unions may not be able to afford. Legal action is costly in terms of both money and time, and its conflictual nature can emphasise and publicise hostility between the parties. Combined with the forthcoming changes to employment relations, however, it appears the declining trends in union membership are unlikely to eliminate its role in employment relations, particularly if unions are able to utilise more creative tactics in promoting the interests of their members.

8.4 Implications for Policy

8.4.1 Government Industrial Relations Policy and Employment Legislation

This case is particularly relevant as an example of public sector employment relations and negotiations, given the general axiom that governments are considered to be model employers. According to Yemin (1993), a government's responsibility as a role model generally entails a favourable or more accommodating attitude towards public sector unionism and a more consultative or open approach to negotiating terms and conditions of employment. To this end, the State Sector Act 1988 contains "good employer" provisions to guide the public sector's employment relations policies. It is based on the principles that to be a good employer one must seek to understand employees' interests and maximise the common interests of employees and employer. It is also assumed to promote the use of dispute resolution procedures that are in the best interests of organisational effectiveness and conducted out of consideration for the long term, or strategic nature of employment relations (Boxall, 1991). This tends to emphasise activities and policies such as fostering good union-management relations where employees choose to join unions, employment security, and efforts to enhance equity such as equal employment opportunities and merit-based decision-making

practices (Boxall, 1991). However, the “good employer” provisions have been left open to interpretation by the Courts, a responsibility that is affected by problems of achieving consensus on moral judgements (Boxall, 1991).

However, it can be argued that the provisions in the State Sector Act are somewhat inconsistent with the legislation governing employment relations in the 1990s, the Employment Contracts Act. This Act was introduced by the National Government, whereas the Labour Government enacted the State Sector Act in the late 1980s. The ECA indicated the National Government’s “hands-off” approach in its industrial relations policy as evidenced by the non-prescriptive nature of this legislation. Basically, the Government is seen as allowing employers to negotiate as they see fit and in accordance with their individual needs and resources. However, it can be argued that this is to the detriment of effective and sound employment practices, including those pertaining to negotiations. According to Davenport (1999: 113),

There is no express obligation to commence bargaining; no obligation to justify a position or consider alternatives; no obligation to disclose information material to a position or demands; no obligation to genuinely seek agreement; and no obligation to persist with bargaining until a settlement or genuine impasse is reached.

When combined with the ideology of the Employment Contracts Act and the ongoing reform striving to improve the economic and managerial efficiency of the public sector, the “good employer” provisions in the State Sector Act appear restricted, and even sidelined, as the force of reforms and the flexibility provided by the ECA are predominant influences in public sector employment relations. And if one subscribes to the role of the government as an exemplary employer, then this also conveys implications for the private sector, or employment relations in general.

8.4.2 Employers’ Industrial Relations Policy

In addition to the consequences for the practice of negotiations, the findings of this case have implications for employers’ employment relations policies. While employers may not view the public sector as a model demonstrating how to conduct employment relations, public sector activities do provide an idea of what is considered

acceptable and unacceptable in terms of employment policies. The case of the New Zealand Fire Service, for example, conveys the impression that protracted disputes are likely to be tolerated by the government without the threat of third party intervention, given that this has been the approach to its own employment negotiations. It shows that the Government is content to confer responsibility for negotiations and dispute resolution to its managers and not interfere, even if the dispute becomes the centre of political and social debate and the archetypal “football” of political parties and numerous interest groups. Thus, New Zealand’s employment relations are carried out within an environment permissive of a wide range of policies and negotiating strategies. This leaves the choice of strategy open to individual choice, whereby if employers are predisposed to adversarial negotiations based on the nature of their overall approach to employee relations, there are few, if any, processes or procedures in place to moderate the potential exploitation of employees. For example, management or an employer engages what Walton (1989) defined as a control strategy, which emphasises employees as a labour cost to be minimised and their behaviour to be controlled through economic and legal contracts and sanctions. It is likely that this will result in largely antagonistic negotiations where employees seek to increase the wages that the employer strives so hard to minimise. Furthermore, in the private sector there are fewer barriers to choosing an escape strategy, or at least being able to issue believable threats to escape the relationship within the context of a forcing strategy.

In the Fire Service, the essential nature of the service provided and the requirement that it be available continuously precluded the use of an escape strategy. In the private sector, however, an escape strategy may be considered a better alternative than a protracted dispute based on escalating forcing tactics. For example, Ansett New Zealand chose to endure a strike at a cost of millions of dollars in order to obtain the employment contract and more flexible working practices it sought from its pilots. This strategy was buttressed by Ansett’s decision to hire permanent replacement workers to provide a minimal service and eventually replace all of the striking pilots. This and other contentious disputes have been played out within the private sector with minimal and inconsequential censure from the Government. Thus, the nature of employment relations in the public sector, as evidenced by the Fire Service industrial dispute, can have a significant influence on private sector negotiations and policies.

8.4.3 Good Faith Bargaining

It can be argued that in order to prevent the consequences, particularly on the unsuspecting public and, to a lesser extent, employees who might be subject to the whims of union leadership, the government should instate provisions or procedures to forestall the escalation of conflict in employment negotiations. To this end, the recent Labour-Alliance Coalition has initiated the repeal of the Employment Contracts Act, to be replaced with legislation created to redress the perceived inequalities of the existing employment legislation. The Employment Relations Bill includes the concept of good faith bargaining, which essentially requires employers, employees, and unions to deal with each other on the principles of fair dealing, mutual trust, and respect. In respect to negotiating a collective agreement, there are a number of core good faith duties, including the obligations to:

- Meet, consider and respond to any proposals made;
- Respect the role of the other party's representative by not bargaining or communicating with those whom the representative acts for about employment conditions;
- Fairly represent the other party's position in the negotiations to those on whose behalf the other party is acting; and
- Provide relevant information necessary for the purposes of negotiations.

(The Employment Relations Bill: An Overview,
<http://www.executive.govt.nz/minister/wilson/erb/overview.htm>)

It has been argued by critics that good faith bargaining provisions would increase the likelihood of third party intervention, impose greater prescription over the bargaining process, and therefore would result in greater costs and increased litigation. It was purported that the uncertainty arising from this litigation and use of courts would adversely affect the efficient functioning of the labour market (Davenport, 1999). However, the Fire Service dispute indicates that the costs alleged to arise from good faith bargaining are already present in contemporary collective bargaining, but without the attendant benefits that can be obtained from attempting to preserve good faith in interactions.

8.4.4 Dispute Resolution Procedures

Further to the concept of good faith bargaining, it can be argued that some cases might profit from objective third party intervention. How the parties perceive the process of intervention is a key influence on its outcomes and apparent value. For example, the Fire Service suggested mediation at a stage during the dispute, however, it appeared the Union was not amenable to that suggestion. This might have been a result of the Union's perception that mediation would most likely result in an outcome more favourable to the employer than the Union. However, when the parties did engage in mediation after agreeing to in the Employment Court, the parties failed to reach an agreement, yet doing so did not appear to adversely affect either party's outcomes or substantially alter the balance of power.

The value of third party intervention is a function of the cost of continued disagreement relative to the cost of seeking a mediated agreement. It has been established in decision theory that individuals and organisations tend to be risk averse. Given this tendency, it is considered a paradox in negotiating behaviour that an increasing number of negotiations reach impasse, as failing to reach an agreement generally results in the risk-seeking alternative of an agreement determined by third party intervention (Bazerman and Neale, 1983). However, this is a particularly applicable conclusion for situations in which the determination of a third party is binding, such as an arbitrator. The provisions in the Employment Relations Bill pertaining to dispute or problem resolution procedures relate in the first instance to mediation services. Mediation, in this sense, includes any service or intervention that can make a difference. The Bill places deliberate emphasis on minimising the formality and legality of such services. There are also plans to establish an Employment Relations Authority as a low-level investigatory body designed to resolve minor issues without resulting to the costly and time-consuming process of a hearing in the Employment Court. Thus, it appears that the provisions of the forthcoming Employment Relations Act may hold the potential to address some of the factors exacerbating a dispute such as that occurring in the Fire Service.

8.5 Limitations of Study

The inherently conflictual and competitive nature of an industrial dispute renders it a difficult phenomenon to study. The analysis in this study is based upon documents and interviews influenced by subjects' perspectives and interpretations, which are then subject to my own interpretations, biases, and perspectives. A key limitation, then, is the biases of the researcher's values and subjective interpretations of events. Furthermore, the nature of the data collected

the study may be limited in its analysis from the employer's point of view, as the majority of data was obtained from the Union. The Fire Service was somewhat reluctant to reveal employment relations practices and their approach to negotiations. This may be as a result of their wariness given ongoing media campaigns instigated by Union castigating their actions and negotiating approaches. This industrial dispute has received substantial attention from the media, even without the Union's press releases. This is likely to have an impact upon the Fire Service's approach to negotiations. As an employer in the public sector, the Fire Service has been somewhat limited in their ability to express their opinions of negotiations and the Union. It has developed an approach to dealing with the media and the dissemination of information regarding the dispute that focuses on retaining the confidentiality of its employment relations. This occurs within reason, however, as the Fire Service was compelled to respond to the Union's comments and allegations on occasion.

Further to the limitations imposed by the nature of the data, the sheer volume of documents and archives affected what information was interpreted and what was not. Not every event and process within the dispute could be incorporated into this analysis, as it is an exceptionally complex and multi-faceted case. Therefore, the selection of material to be analysed was based on subjective and arbitrary decisions regarding which documents and sources of data were most relevant to an analysis of negotiating strategies. Furthermore, some pertinent events and activities were excluded on the basis that, while they related to negotiating strategies, they were not quite as relevant or helpful as others were. Time and resource limits constrained the ability to analyse all relevant events. However, further research could focus on specific facets of the case, such as the nature of public sector governance that appears to preclude government

intervention. This renders negotiations in the New Zealand public sector more dyadic rather than multilateral in comparison to the public sectors of other countries. As such, however, it does assist the applicability of the findings of this study to various contexts, across sectors and organisations.

A further limitation to the ability to apply the findings and implications of this case may pertain to the nature of the research design. It is a single case study of a phenomenon that occurred within a unique context, affected by an array of interacting factors impinging upon its dynamics. As such, the findings may not apply to industrial disputes occurring in other contexts. However, where possible, the findings of this case have included lessons regarding the dynamics of negotiations that can occur in any context, such as the escalation of commitment to a forcing strategy. I believe the findings relating to such phenomena are applicable across contexts.

8.6 Directions for Future Research

Many studies of employment negotiations have been restricted to laboratory settings using various games enabling the manipulation of key variables (e.g. Froman and Cohen, 1969; Hamner and Yukl, 1977), or they comprise cross-sectional analyses of a dispute (e.g. Kochan, Huber, and Cummings, 1975). In order to gain a deeper understanding and appreciation of the multiple and complex factors impinging on the effectiveness and success of negotiations, I believe further longitudinal studies would assist the development of this understanding, particularly in cases of prolonged industrial disputes. Given the current business and economic environment where efficiency and flexibility are coveted qualities, often pursued through strategies detrimental to the role and strength of workforce unionisation, extended industrial disputes have become an anomaly. When they do develop, it is pertinent for the development and benefit of both theory and practice to understand the nature of the context and factors enabling their development.

At a different level, considerable research into public sector disputes has been conducted in America, where the governance systems and hierarchies, and therefore nature of employment relations and negotiations, are significantly different from those

in New Zealand. An interesting concept for further research would be to compare the dynamics of disputes in the public and private sectors in New Zealand. The New Zealand public sector is arguably more comparable to the private sector in contrast to the American public sector. It exhibits decentralised authority in its departments or entities, but due to the size of some entities their negotiations remain centralised, as in the Fire Service. Therefore, the chief executive as employer has complete authority over negotiations for an entire workforce, not a local region or municipal as in the American public sector. Kochan et al. (1975: 12) state that “the differences between the structures of organisations in the public and private sector often centers on the absence of a single hierarchical ordering among the decision-making units in organisations in the public sector.” However, reforms of the New Zealand public sector have emphasised a single hierarchy within governmental units, supported by the Government’s reluctance to interfere in the duties of its chief executives and managers. As such, it would be of interest to analyse the differences between public and private sector dynamics, with particular respect to the influence of third parties and the autonomy of the parties directly involved to manage negotiations. The findings of such a study may also serve to enhance the applicability of the findings of this study to both the public and private sectors.

8.7 Conclusion

This chapter provides an overview of the research findings and conclusions. In establishing and elucidating these findings, there is also consideration for the implications this study has for practice and policy. The public sector nature of the case organisation results in implications for both the policy and practice of employment relations in the government. It is argued that the findings have significant implications for the characteristics of strategic decision-making, with particular concern for the risks inherent in initial choices and the factor impacting upon the proceeding dynamics of an industrial dispute. The highly contentious and controversial nature of the industrial dispute studied in this research also heralds implications for government policy regarding good faith bargaining policies and the nature of the provision of dispute resolution procedures. The implications for public policy are discussed with specific

reference to forthcoming changes in employment legislation. The provisions in this legislation are expected to address some of the key concerns arising from this case, such as the extended duration of the dispute without resort to dispute resolution procedures.

Finally, there are a number of limitations to this study, particularly regarding the nature of the data collected and the ways in which this data was selected, perceived, and interpreted. In a case such as this, it is easy for one to take sides. However, it is not within the scope of this study to pass judgement on the right or wrong of the parties' approaches to negotiations, but to instead consider the dynamics and characteristics of the phenomenon. Nor is it the purpose of this study to suggest possible solutions, given that the parties are, at the time of writing, still engaged in negotiations aimed at ratifying a collective employment contract. However, the parties are currently engaging a more conciliatory approach to their negotiations, which may reach fruition in the near future.

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Appendix 1.

List of Types of Forms of Documents and Archives used in Data Analysis

Union:

- Notices to members
- Press releases
- Correspondence to employer, political parties, lawyers, MPs, UFBA etc.
- Submissions to Select Inquiry Committees
- Records of negotiations meetings
- Opening submissions in Employment Court and Court of Appeal cases

Fire Service:

- Memoranda
- Correspondence to Union and other parties
- Internal memos
- Strategic documents, reports, position papers, roster analyses
- Statistics, survey data
- Corporate plans; for example, “The Way Forward” and other restructuring proposals
- Court documents
- Press releases
- Records of negotiations meetings

General documents:

- Newspaper, magazine, and journal articles
- Court documents and rulings
- New Zealand Executive Government news release archives (internet source)
- Transcripts of radio and television interviews
- Press releases from third parties, including political parties and interest groups

Appendix 2.

List of Codes used in Data Analysis

- (1) /Context
 - (1 1) /Context/Social
 - (1 2) /Context/Political
 - (1 2 1) /Context/Political/Conflict of Interest
 - (1 2 2) /Context/Political/Chief Exec vs. Fire Service Commission
 - (1 3) /Context/Legal
 - (1 4) /Context/Economic
 - (1 4) /Context/Economic/Fire Service funding issues
 - (1 5) /Context/Technological
 - (1 6) /Context/Negotiation structure
 - (1 7) /Context/Negotiation process
- (2) /Strategic choice
 - (2 1) /Strategic choice/Govt policy
 - (2 2) /Strategic choice/Legislation
 - (2 3) /Strategic choice/Nature of Emp Rel.
 - (2 4) /Strategic choice/Bargaining power
 - (2 5) /Strategic choice/Objectives
 - (2 6) /Strategic choice/Interpretation of objectives
 - (2 6 1) /Strategic choice/FS interpretation of U's objectives
 - (2 6 2) /Strategic choice/U interpretation of FS's objectives
 - (2 7) /Strategic choice/Expected response
 - (2 8) /Strategic choice/Anticipated feasibility
- (3) /Forcing
 - (3 1) /Forcing/Tactics
 - (3 1 1) /Forcing/Tactics/Commitment
 - (3 1 1 1) /Forcing/Tactics/Commitment/demands
 - (3 1 1 2) /Forcing/Tactics/Commitment/threats
 - (3 1 1 3) /Forcing/Tactics/Commitment/communicating commitment
 - (3 1 1 4) /Forcing/Tactics/Commitment/credibility tactics
 - (3 1 1 5) /Forcing/Tactics/Commitment/preparations to fulfill threats
 - (3 1 1 6) /Forcing/Tactics/Commitment/creating & fulfilling minor threats
 - (3 1 1 7) /Forcing/Tactics/Commitment/preventing O from committing
 - (3 1 1 8) /Forcing/Tactics/Commitment/abandoning commitments
 - (3 1 2) /Forcing/Tactics/Utility manipulation
 - (3 1 2 1) /Forcing/Tactics/Utility manipulation/FS assessing U's utilities
 - (3 1 2 2) /Forcing/Tactics/Utility manipulation/U assessing FS's utilities
 - (3 1 2 3) /Forcing/Tactics/Utility manipulation/FSC infl. U's assess of FS's

- (3 1 2 4) /Forcing/Tactics/Utility manipulation/U infl. FS's assess of U's
 - (3 1 2 5) /Forcing/Tactics/Utility manipulation/FS infl. U's assess of U's
 - (3 1 2 6) /Forcing/Tactics/Utility manipulation/U infl. FS's assess of FS's
 - (3 1 2 7) /Forcing/Tactics/Utility manipulation/Manipulating strike costs
- (3 1 3) /Forcing/Tactics/Influencing structure
 - (3 1 3 1) /Forcing/Tactics/Infl. structure/Centralisation
 - (3 1 3 2) /Forcing/Tactics/Infl. structure/Communication
 - (3 1 3 3) /Forcing/Tactics/Infl. structure/No. of parties
 - (3 1 3 4) /Forcing/Tactics/Infl. structure/Level of negotiations
 - (3 1 4) /Forcing/Tactics/Legal
 - (3 1 5) /Forcing/Tactics/Political
- (3 2) /Forcing/Outcomes
 - (3 2 1) /Forcing/Outcomes/FS response to U threats
- (4) /Fostering
 - (4 1) /Fostering/Initiatives
 - (4 2) /Fostering/Tactics
 - (4 3) /Fostering/Responses
 - (4 4) /Fostering/Consequences
- (5) /Mixed strategy
- (6) /Third parties
 - (6 1) /Third parties/Govt
 - (6 1 1) /Third parties/Govt/Govt role
 - (6 1 2) /Third parties/Govt/Employer role
 - (6 2) /Third parties/Public
 - (6 2 1) /Third parties/Public/ FS seek public support against U
 - (6 2 2) /Third parties/Public/ U seek public support against FS
 - (6 3) /Third parties/Political parties
 - (6 4) /Third parties/Interest groups
 - (6 5) /Third parties/volunteer firefighters
 - (6 6) /Third parties/mediation
 - (6 7) /Third parties/Use of media
- (7) /Managing internal differences
 - (7 1) /Managing internal differences/U within own orgn
 - (7 2) /Managing internal differences/FSC within own orgn
 - (7 3) /Managing internal differences/U within FSC
 - (7 4) /Managing internal differences/FSC within U
- (8) /Shaping intergroup attitudes
- (9) /International comparisons

- (10) /Bargaining outcomes
 - (10 1) /Bargaining outcomes/No agreement
 - (10 2) /Bargaining outcomes/Adjourned
 - (10 3) /Bargaining outcomes/Positive
 - (10 4) /Bargaining outcomes/Refusal to negotiate
 - (10 4 1) /Bargaining outcomes/FS Refusal to negotiate
 - (10 4 2) /Bargaining outcomes/U Refusal to negotiate
 - (10 5) /Bargaining outcomes/Impasse
 - (10 6) /Bargaining outcomes/ New proposal or offer
 - (10 6 1) /Bargaining outcomes/ FS new proposal or offer
 - (10 6 1) /Bargaining outcomes/ U new proposal or offer
- (11) /Restructuring proposals and issues
 - (11 1) /Restructuring proposals/crew number changes (MSM)
 - (11 2) /Restructuring proposals/establishment number changes
 - (11 3) /Restructuring proposals/use of volunteers
 - (11 3 1) /Restructuring proposals/use of volunteers/CSTs
 - (11 4) /Restructuring proposals/operational structure
 - (11 5) /Restructuring proposals/strategic plans & implementation
 - (11 6) /Restructuring proposals/retirement and redundancy
 - (11 7) /Restructuring proposals/Roster system
 - (11 8) /Restructuring proposals/implications, efficiency
- (12) /Consultation
- (13) /Consultation vs. Negotiation
- (14) /Bargaining issues
 - (14 1) /Bargaining issues/pay
 - (14 2) /Bargaining issues/routine hours
 - (14 3) /Bargaining issues/staff numbers
- (15) /Effectiveness
- (16) /Concessions made
 - (16 1) /Concessions made/FSC
 - (16 2) /Concessions made/Union

Appendix 3

An Example of Coding from February 1994 (date of expiry of collective employment contract)

FEBRUARY 1994

26 February 1994 NZH p.5

- 11/4/ FS's refusal to guarantee existing command structure on appliances. Doesn't rule out flattening of operational rankings
- 3/1/3/2/ FS sent out notice to staff – 'rumours, misinfo and conjecture' about structural review.
- 13/ FS argues review and pay talks are separate issues
- 3/1/1/5/ U holds national stopwork meetings to consider industrial action
- 3/1/1/6/ U organises national ballot

8 March 1994 NTM 4/1994

- 3/1/1/6/ U holds ballot: 972/161 to reject emper's offer and 979/140 in favour of holding strike action.
- 2/5/ Plan committee meeting to develop ongoing strategy and to ensure strike notice complies with law.
- 6/2/ U claims that positive media response to dispute and ballot indicates public support.
- 3/1/1/4/

10 March 1994 NTM 5/1994

- 3/1/1/5/ U files Notice of Strike Action; strike to commence 3 April 1994.
All operational members to refuse all duties other than a response to fire calls and other emergency incidents.
- 6/2/ 6/5/1/ "Locals are encouraged to find ways to bring the message of the unfairness and inadequacy of the employer's proposal directly to the community."
The community understands and appreciates the tremendous work of Firefighters and community support will be actively solicited at all levels."
- 10/2/ Negotiations remain adjourned; U hopes emper will stop the freeze and make an offer to be recommended to members

11 March 1994 NTM 6/1994

- 12/ 5 U indicates memos in which FS referred to using focus groups to develop solutions to issues identified by staff in earlier stages of review. According to U, focus groups never took place and ff weren't involved in this aspect of the review.

Appendix 4.

Detail of Information Packs sent to Professional Firefighters

February 23, 1995

The 56-Hour Roster and Options

It was claimed that overseas experience has shown that the 56-hour roster is the only shift formula that preserves the maximum number of consecutive days off and paid rest and sleeping duty while allowing improvements in efficiency and the maintenance of standards of cover. These conditions were identified during the Chief Executive's Review as being the key employment conditions firefighters wished to retain.

The shift pattern for a 56-hour roster works on a nine day cycle, with two cycles of one day on, one day off, followed by a day on and four days off. 26 of the 56 hours are designated as paid on-call rest and sleep. The shifts consist of 10-12 hours of active duty with the remaining hours for sleep or rest. Active duty would consist of attending incidents, training, and maintenance of appliances. The savings from implementing this roster system accrue from the opportunity to change from a four watch (or crew) roster to a three watch roster. Even though one crew would be dropped from each shift, there would be the same number of firefighters on duty at any time as under the existing shift or roster system. In effect, this would enable the service to accomplish efficiencies while maintaining standards of cover.

The range of six shift options was summarised and it was stated that they would be presented to the union for negotiation that day. Each option itemised the number of watches, the change in number of staff on duty for each shift, shift length and cycle, number of duty days and days off, and the shift pattern. The year was divided into two leave cycles, with each firefighter allowed a set amount of leave within each cycle. The sixth option involved a 40-hour roster, with 8-hour shifts incorporating a mix of night and day shifts. No changes would be required to the number of staff on duty for each shift. The 40-hour roster would achieve the required savings by eliminating the cost of downtime, thus increasing the productivity of firefighters.

In an interesting twist, the service later found that it needed to apply for an exemption from the Land Transport Authority in order to be able to implement a 56-

hour roster. The requirements the roster would have for appliance drivers would contravene the Authority's restrictions placed on hours, or time spent driving. The application was declined, on the basis that the roster requirements could contribute to drive fatigue.

Other Benefits

The Fire Service also improved its Enhanced Early Retirement package, providing 42 weeks pay after 15 years of service. This would increase by two weeks for every additional year of service, up to a maximum of 72 weeks pay. A further offer proposed to raise the employer's contribution to the superannuation scheme for firefighters from \$1.52 (nett) to \$1.80 (nett) for every employee dollar. The service also stated that it was working to improve access to training for its employees.

The Community Firefighter Model

The information package also introduces the community firefighter concept, which involves employing people on both a paid and voluntary basis. This model was developed through a process of examining how the Fire Service could provide a better service to the community.

The community firefighter was designed to be a volunteer brigade position, receiving wages to be on-duty during the day but also available for volunteer shifts at night. As a result, community firefighters would be required to involve sleep at or live near their station. However, in addition to firefighting requirements, the community firefighter was expected to have "much more responsibility in contributing to the well-being of the local community. This may take the form of promoting Fire Service initiatives such as smoke alarm installation, or be joint exercises with, for example, the Ambulance service, Civil Defence or Community Police." It was not clear if the service intended community firefighters to have more responsibility than contemporary volunteers or professional firefighters, implying that the latter do not perform such activities or exhibit the degree of contribution to the community that the new community firefighters would. However, the report stated that at that stage the model was merely a proposal on which the employer was seeking to consult with the union, providing schedules to illustrate how implementation could occur. This model would later become the centre of controversial debate among numerous community groups

and interested parties. It would be implemented in the format of Community Service Teams (CSTs) on July 1, 1996 without the support of professional firefighters and their union.